

## **MEETING NOTICE AND AGENDA**

Name of Organization: Committee to Conduct an Interim Study of Issues Relating to Pretrial Release of Defendants in Criminal Cases (Senate Concurrent Resolution No. 11, 2019 Session)

Date and Time of Meeting: Monday, August 17, 2020  
9:00 A.M.

Place of Meeting: Pursuant to Governor Steve Sisolak's [Emergency Directive 006](#), there will be no physical location for this meeting. The meeting can be listened to or viewed live over the Internet. The address for the Nevada Legislature's website is <http://www.leg.state.nv.us>. Click on the link "[Calendar of Meetings-View](#)."

*We are pleased to make reasonable accommodations for members of the public with a disability. If accommodations for the meeting are necessary, please notify Jordan Haas, Committee Secretary, at (775) 684-6830 or [jordan.haas@lcb.state.nv.us](mailto:jordan.haas@lcb.state.nv.us), as soon as possible.*

**Please provide the meeting secretary by email (at [jordan.haas@lcb.state.nv.us](mailto:jordan.haas@lcb.state.nv.us)) or facsimile (at (775) 684-6761) or mail (401 S. Carson Street, Carson City, NV 89701) testimony and visual presentations if you wish to have complete versions included as exhibits with the minutes.**

## AGENDA

**Note: Items on this agenda may be taken in a different order than listed. Two or more agenda items may be combined for consideration. An item may be removed from this agenda or discussion relating to an item on this agenda may be delayed at any time.**

- I. Call to Order
- II. Roll Call
- III. Public Comment  
Public testimony under this item may be presented by phone or written comment. Because of time considerations, each caller offering testimony during this period for public comment will be limited to not more than 2 minutes. A person may also have comments added to the minutes of the meeting by submitting them in writing either in addition to testifying or in lieu of testifying. Written comments may be submitted by email (at [jordan.haas@lcb.state.nv.us](mailto:jordan.haas@lcb.state.nv.us)) or facsimile (at (775) 684-6761) or mail (401 S. Carson Street, Carson City, NV 89701) before, during or after the meeting.

To dial in to provide testimony during this period of public comment in the meeting, any time after 8:30 a.m. on Monday, August 17, 2020:

Dial: (669) 900-6833

When prompted to provide your Meeting ID, please enter: 928 7683 8907 then press #

When prompted for a Participant ID, please enter #

To resolve any issues related to dialing in to provide public comment for this meeting, please call (775) 684-6990.

*For  
Possible  
Action*

- IV. Approval of the Minutes of the Meeting Held on June 3, 2020

*For  
Possible  
Action*

- V. Work Session - Discussion and Possible Action on Recommendations Relating to:
  - A. Nevada Pretrial Risk Assessment
  - B. Pretrial Release Process
  - C. Data Collection
  - D. Citations in Lieu of Jail
  - E. Rights of Victims of Crime
  - F. Failure to Appear
  - G. Alternatives to In-Person Bail Hearings

The Work Session Document Summary of Recommendations is attached below. The full document with supporting attachments is available on the meeting page of the Committee to Conduct an Interim Study of Issues Relating to Pretrial Release of Defendants in Criminal Cases, or a written copy may be obtained by contacting Jordan Haas, Committee Secretary, by email (at [jordan.haas@lcb.state.nv.us](mailto:jordan.haas@lcb.state.nv.us)) or by phone (at (775) 684-6830).

#### VI. Public Comment

Public testimony under this item may be presented by phone or written comment. Because of time considerations, each caller offering testimony during this period for public comment will be limited to not more than 2 minutes. A person may also have comments added to the minutes of the meeting by submitting them in writing either in addition to testifying or in lieu of testifying. Written comments may be submitted by email (at [jordan.haas@lcb.state.nv.us](mailto:jordan.haas@lcb.state.nv.us)) or facsimile (at (775) 684-6761) or mail (401 S. Carson Street, Carson City, NV 89701) before, during or after the meeting.

To dial in to provide testimony during this period of public comment in the meeting, *any time after the Chair announces this second period of public comment* on Monday, August 17, 2020:

Dial: (669) 900-6833

When prompted to provide your Meeting ID, please enter: 928 7683 8907 then press #

When prompted for a Participant ID, please enter: #

To resolve any issues related to dialing in to provide public comment for this meeting, please call (775) 684-6990.

#### VII. Adjournment

---

Notice of this meeting was posted on the Internet through the Nevada Legislature's website at [www.leg.state.nv.us](http://www.leg.state.nv.us).

Supporting public material provided to members of the Committee for this meeting may be requested from Jordan Haas of the Legal Division of the Legislative Counsel Bureau at (775) 684-6830 or by email at [jordan.haas@lcb.state.nv.us](mailto:jordan.haas@lcb.state.nv.us). Any such material will be made available at the Nevada Legislature's website at [www.leg.state.nv.us](http://www.leg.state.nv.us).



## **WORK SESSION DOCUMENT**

### **Committee to Conduct an Interim Study of Issues Relating to Pretrial Release of Defendants in Criminal Cases**

[Senate Concurrent Resolution No. 11 (2019)]

**August 17, 2020**

Senate Concurrent Resolution No. 11 (“SCR 11”) directed the Legislative Commission (“Commission”) to establish the Committee to Conduct an Interim Study of Issues Relating to Pretrial Release of Defendants in Criminal Cases (“Committee”). The Commission appropriated a budget and authorized the Committee to conduct not more than four meetings for the purpose of conducting a thorough examination of certain issues relating to pretrial release of defendants in criminal cases. The Committee was also tasked with reporting the results and recommendations of this examination to the Commission for submittal to the 81<sup>st</sup> Session of the Nevada Legislature.

The following “Work Session Document” was prepared by staff of the Committee. The document contains recommendations that were presented during hearings or submitted in writing during the course of the 2019–2020 interim. The recommendations have been organized chronologically by topic and are not listed in any preferential order. It should also be noted that any potential policy recommendations listed may or may not have a fiscal impact. Any potential fiscal impacts have not been determined by staff at this time.

The possible recommendations listed in the document do not necessarily have the support or opposition of the Committee. Rather, the recommendations are compiled and organized to assist the members for voting purposes during the work session. The Committee may adopt, change, reject, or further consider any recommendation. The individual proposer or joint proposers of each recommendation are referenced in parentheses after each recommendation.

Finally, although possible actions may be identified within each recommendation, the Committee may choose to recommend any of the following actions: (1) draft legislation; (2) draft a resolution; (3) draft a letter; or (4) include a policy statement of support in the final report. Pursuant to NRS 218D.160, the Committee is statutorily allocated not more than five bill draft requests, and subject to the approval of the Legislative Counsel some recommendations may be combined into a single bill draft.

**A. PROPOSALS RELATING TO NEVADA PRETRIAL RISK ASSESSMENT**

**RECOMMENDATION NO. 1 — Draft a letter urging the Nevada Supreme Court to revalidate the Nevada Pretrial Risk Assessment. (JFA Institute --Dr. Austin)**

**Background Information for Recommendation No. 1**

**Tab A – Presentation on Design and Validation of Nevada Pretrial Risk Assessment**

The Nevada Pretrial Risk Assessment (“NPRA”) is an evidence-based risk assessment tool used to assess the likelihood that a criminal defendant will appear for future court proceedings, as well as the likelihood that a defendant will be a danger to the community if released. During the Committee meeting held on January 21, 2020, John McCormick, Assistant Court Administrator for the Administrative Office of the Courts, testified that in March 2019, the Nevada Supreme Court ordered all judicial districts in Nevada to adopt the NPRA. The order came after successful completion of a study and pilot program which implemented the evidence-based risk assessment. During the Committee meeting on March 3, 2020, Dr. Austin of the JFA Institute, who was involved in the creation of the NPRA, discussed the testing and prototype of the NPRA, which scores defendants based on estimated risk. He discussed factors that the NPRA accounts for (e.g., prior convictions) and statistical data (e.g., failures to appear) gleaned from implementation of the NPRA. Assemblyman Roberts asked Dr. Austin when the NPRA was last assessed to ensure it is operating correctly. Dr. Austin suggested that, because the NPRA has been in use and criminal defendants have been scored by the NPRA, the revalidation of the NPRA would be useful.

**RECOMMENDATION NO. 2 — Draft a letter urging the Nevada Supreme Court to: (a) study racial bias in criminal records in order to determine if racial bias permeates the Nevada Pretrial Risk Assessment; (2) submit a report to the Legislature concerning racial data correlated to the use of the Nevada Pretrial Risk Assessment; and (3) consider staffing resources and best practices for employees preparing pretrial risk assessments and case work. (JFA Institute --Dr. Austin; Triton Management Services - -Marc Ebel; American Civil Liberties Union of Nevada (“ACLU”) --Holly Welborn)**

## **Background Information for Recommendation No. 2**

During the Committee meeting held on March 3, 2020, Dr. Austin of the JFA Institute indicated that the NPRA is statistically valid and was tested for racial and ethnic bias. Committee Chair Dallas Harris asked whether there was any way to mitigate the effect of racial bias in the data used by the NPRA. Dr. Austin conceded that there is a debate surrounding racial bias in evidence-based risk assessment tools because of racial bias based in society and the criminal justice system. Dr. Austin indicated that the question, then, is how severe is the racial bias? He also indicated that, in the data collected through the NPRA study, African-Americans scored a point higher (indicating a higher risk level) than whites and Hispanics based on the use of prior convictions by the NPRA in its calculation of risk. Accordingly, Dr. Austin opined that if there is racial bias in the conviction process, there is racial bias in the NPRA. The NPRA attempts to control for racial bias by using only prior convictions, instead of prior arrests, which would introduce additional racial bias. Chair Harris and Assemblyman Flores expressed concern that the NPRA does not sufficiently account for such bias in the factors that the NPRA considers, such as racial bias resulting in African-Americans' higher prior conviction rates. Dr. Austin proposed that racial bias does not extend from the NPRA itself, but rather the underlying data. Dr. Austin stated that racial bias is introduced into the NPRA via factors like racial bias in conviction rates produced by courts, bias which could be studied and accounted for. Chair Harris suggested that the NPRA could employ mitigating factors (e.g., giving less weight to prior convictions) to offset racial bias. Dr. Austin again indicated that racial bias in the court process would have to be studied in order to properly account for the effect of the racial bias in the NPRA.

During the March 3, 2020, Committee meeting, Marc Ebel, Director of Legislative Affairs for Triton Management Services, also suggested racial bias is present in pretrial risk assessment tools. Citing several studies, Mr. Ebel indicated that risk assessment tools exacerbate recidivism and existing racial disparities in the criminal justice system by finding in favor of more detention. He concluded that the NPRA should be reexamined to ensure it is not exacerbating problems it was meant to solve.

During the Committee meeting held on June 3, 2020, Holly Welborn, Policy Director for the ACLU, further discussed the issue of racial bias in pretrial risk assessments. Kristian Lum of the Human Rights Data Analysis Group, speaking on behalf of the ACLU, suggested that risk assessment tools are only as objective as the data they collect which presents problems because of racial bias in data in criminal history records. Ms. Lum suggested that the data suffers from racial bias because of external factors like racial bias in policing which skew criminal history data (e.g., minorities disproportionately targeted by police for arrest are more likely to be targeted again in the future). She also stated that risk assessment tools may not account for correlations between criminal history (e.g., rearrests) and living in a location that is disproportionately policed. Finally, Ms. Lum posed that, in those cases, unfairness

and bias is introduced into the risk assessment tools because they do not account for correlations which skew the data, meaning the people whom the risk assessment tools were designed to help are disproportionately harmed, for example by falling into a higher risk group. Moreover, Mr. Koepke of Upturn, also speaking on behalf of the ACLU, deduced that racial and ethnic disparities largely remained the same even in states that implemented the risk assessment tools.

Arguing that racial bias permeates criminal history data, Ms. Welborn proposed that the courts report data concerning race in criminal records so that lawmakers can monitor racial bias in the pretrial system.

## **B. PROPOSALS RELATING TO PRETRIAL RELEASE PROCESS**

**RECOMMENDATION NO. 3 — Draft legislation to require bail hearings within a reasonable time.** (Washoe County Public Defender’s Office -- Kendra Bertschy and Evelyn Grosenick; Clark County Public Defender’s Office --Christy Craig and Nancy Lemcke; Clark County District Attorney’s Office --John Jones)

### **Background Information for Recommendation No. 3**

**Tab B** – Presentation on Current Pretrial Release Process

**Tab C** – Memorandum of Authority re: Time Limits for Adjudicating Post-Arrest Detention

**Tab D** – Presentation on Pretrial Release Reform

**Tab E** – Fixing Bail Presentation

During the Committee meeting held on March 3, 2020, Kendra Bertschy and Evelyn Grosenick of the Washoe County Public Defender’s Office presented on current pretrial releases processes across Nevada. The pair testified that significant differences in the pretrial process exist across the counties in this State. Counties are not uniform on when bail hearings must occur, nor are judges within the same court uniform on when the defense is permitted to address custody. Consequently, Ms. Bertschy and Ms. Grosenick testified that even low-risk detainees may spend unnecessary time in pretrial detention and may spend longer in jail in one county versus another. For example, at the same meeting, Adam Cate, Deputy District Attorney, Washoe County District Attorney’s Office, testified that unlike Clark County, Washoe County does not use standardized bail schedules, a procedural distinction which affords certain pretrial detainees the opportunity to be immediately released in Clark County whereas the same individual would be detained until his or her pretrial detention hearing in Washoe County.

Additionally, at the Committee meeting on June 3, 2020, Christy Craig and Nancy Lemcke of the Clark County Public Defender’s Office discussed the Nevada Supreme

Court's decision in *Valdez-Jimenez v. Eighth Judicial District Court*, in which the Court held that a bail hearing must occur within a reasonable time after arrest.

The following recommendations for legislation embody various avenues to implement pretrial detention hearings within a reasonable amount of time after the arrest of a defendant:

**Policy A:** At the Committee meeting held on March 3, 2020, Ms. Bertschy and Ms. Grosenick proposed legislation requiring a bail hearing within 12 to 24 hours after arrest, or within 48 hours if the State seeks preventive detention measures for individuals who pose a danger to the community.

**Policy B:** At the Committee meeting held on June 3, 2020, Ms. Craig and Ms. Lemcke, in light of *Valdez-Jimenez* and based in part on nonbinding case law, suggested legislative reforms which include mandating a prompt bail hearing within maximum of 48 hours of arrest, but not later than 24 hours after arrest if bail is offered on a standardized bail schedule.

**Policy C:** During the March 3, 2020 meeting, John Jones of the Clark County District Attorney's Office suggested permitting local jurisdictions to individually implement procedures which would facilitate prompt bail hearings. Mr. Jones utilized Clark County's Initial Appearance Court as an example of a local jurisdiction implementing pretrial release procedures that embody prompt bail hearings.

**RECOMMENDATION NO. 4 — Draft legislation prohibiting standardized bail schedules and requiring individualized bail hearings.** (Washoe County Public Defender's Office -- Kendra Bertschy and Evelyn Grosenick; Clark County District Attorney's Office --John Jones; Robert Langford, Esq.)

**Background Information for Recommendation No. 4**

During the March 3, 2020, Committee meeting, Kendra Bertschy and Evelyn Grosenick of the Washoe County Public Defender's Office testified that Nevada needs an individualized hearing for all detainees in order to properly determine if detention is necessary. At the same meeting, John Jones of the Clark County District Attorney's Office agreed that individualized bail hearings should be the norm, rather than standardized bail. Moreover, at this meeting, Robert Langford, a private defense attorney in Clark County recommended eliminating standardized bail schedules. He testified that standardized cash bail is unconstitutional, asserting that it is a violation of the Equal Protection Clause of the U.S. Constitution because it does not take into account one defendant's ability to pay while another defendant may be able to afford the standard cost.



**RECOMMENDATION NO. 5 — Draft legislation placing burden of proof on the State.** (Clark County Public Defenders --Christy Craig and Nancy Lemcke)

**Background Information for Recommendation No. 5**

During the meeting held on June 3, 2020, Christy Craig and Nancy Lemcke of the Clark County Public Defender’s Office testified that *Valdez-Jimenez* clarifies that it is the State that bears the burden of proving the necessity of bail, and that the State cannot constitutionally be relieved of that burden. Moreover, *Valdez-Jimenez* held that subsection 1 of NRS 178.4851 was unconstitutional, as it placed the burden on the defendant to show good cause before being released without bail. Ms. Craig and Ms. Lemcke proposed adopting legislation repealing the current good cause requirement and codifying the State’s burden of proof in pretrial detention matters.

**RECOMMENDATION NO. 6 — Draft legislation permitting pretrial detention only when necessary.** (Clark County Public Defender’s Office --Nancy Lemcke and Christy Craig; Washoe County Public Defender’s Office --Kendra Bertschy and Evelyn Grosenick; Triton Management Services --Marc Ebel; Clark County District Attorney’s Office --John Jones)

**Background Information for Recommendation No. 6**

**Tab F – Presentation on *Valdez-Jimenez***

**Policy A:** At the March 3, 2020 meeting, Nancy Lemcke of the Clark County Public Defender’s Office proposed that the State should have three options regarding the defendant’s custody during the pretrial process. She specified that a court should consider these options in the following order: (1) release without conditions; (2) release with conditions; (3) and detention. Under that framework, Ms. Lemcke argued that the State can make a transparent request and proceed to a hearing if it is seeking conditional release or detention.

Also, during the Committee meeting held on June 3, 2020, Christy Craig and Nancy Lemcke of the Clark County Public Defender’s Office discussed the *Valdez-Jimenez* case. The pair proposed that *Valdez-Jimenez* clarifies that the default during the pretrial process is to release the defendant, and that bail would be excessive for anyone not a danger to the community or who presents a low risk of failing to appear. Detention would accordingly be appropriate only when necessary. In conclusion, Ms. Craig and Ms. Lemcke stated that *Valdez-Jimenez* requires the State to prove by clear and convincing evidence that detention, as opposed to release or less restrictive nonmonetary conditions, is necessary to ensure community safety and the defendant’s return to court. That standard would apply whether the State seeks conditioned release or detention of a defendant.

Ms. Bertschy and Ms. Grosenick of the Washoe County Public Defender's Office testified similarly at the March 3, 2020 meeting, stating that, constitutionally, conditions of release must be the least restrictive means necessary to prevent imminent threat of serious bodily harm and ensure a defendant's future appearance.

During the same Committee meeting, Marc Ebel of Triton Management Services recommended two presumptions, the first of which was a presumption that the maximum number of people should be released under the least restrictive means possible while also ensuring community safety and defendants' appearance in court.

**Policy B:** At the March 3, 2020, meeting John Jones of the Clark County District Attorney's Office agreed that defendants should not be detained unnecessarily, but that the court must consider whether a defendant is a risk to the public or the victim (which must be accounted for under Article 1, Section 8A of the Nevada Constitution) in determining whether bail is necessary. Specifically, Mr. Jones recommended codifying Marsy's Law (Article 1, Section 8A of the Nevada Constitution) into the pretrial release statutes which would codify the rights of victims to have input into pretrial release decisions, arguing that the safety of victims and the victims' families must be considered such decisions. In conclusion, Mr. Jones argued that, in considering the necessity of pretrial detention, a court should consider: (1) the safety of the community, including the safety of a victim, if applicable; (2) whether the defendant will interfere in the prosecution; and (3) whether the defendant is a flight risk.

**RECOMMENDATION NO. 7 — Draft legislation prohibiting unattainable conditions of pretrial release.** (Clark County Public Defender's Office --Nancy Lemcke and Christy Craig; Progressive Leadership Alliance of Nevada (PLAN) --Leslie Turner)

**Background Information for Recommendation No. 7**

Discussing *Valdez-Jimenez* at the Committee meeting held on June 3, 2020, Christy Craig and Nancy Lemcke of the Clark County Public Defender's Office stated that courts must set attainable conditions of release of which can include not only monetary conditions of release but also nonmonetary conditions of release. Specifically in determining what monetary conditions of release are appropriate, if the court sets an amount the defendant cannot afford, the pair argued that the circumstance would be a *de facto* detention order, triggering a heightened procedural process as to whether the detention is necessary.

To address the attainability issue, Ms. Craig and Ms. Lemcke recommended prohibiting a court from imposing a condition of release with which defendants cannot comply, such as requiring a homeless person to have an address. Ms. Craig and Ms.

Lemcke argued that doing so would bring the State in line with *Valdez-Jimenez* and facilitate transparent pretrial release determinations.

At the same meeting, Leslie Turner of the Progressive Leadership Alliance of Nevada (“PLAN”) recommended revisiting AB 325 (2019), which did not pass. AB 325, in part, makes monetary conditions of release a last resort, given that monetary conditions of release amounts continue to be ordered in amounts defendants cannot afford.

**RECOMMENDATION NO. 8** — **Draft legislation creating a mechanism which requires the review of unattainable conditions of release.** (MacArthur Foundation/Clark County Detention Center --Richard Suey and Ta’mara Silver; Clark County Public Defender’s Office --Christy Craig and Nancy Lemcke)

**Background Information for Recommendation No. 8**

**Tab G: Clark County Detention Center (CCDC) Pretrial Jail Population**

**Policy A:** During the Committee meeting held on March 3, 2020, Richard Suey of the MacArthur Foundation and Ta’mara Silver of Clark County Detention Center (“CCDC”) discussed statistics relating to the CCDC jail population. The discussion included statistics on persons held at CCDC on bail of less than \$2,500 for more than seven days. Mr. Suey and Ms. Silver posited that despite efforts to increase services to jail populations, such as sending bail reports on individuals held longer than seven days to judges and attorneys, that typically if a defendant cannot afford to pay the \$2,500 they will not be released. Chair Harris asked what could be done to help and assess persons who do not have the means to post bail. Mr. Suey and Ms. Silver suggested a mechanism, such as a population manager as used in Clark County, through which jails themselves can more frequently assess and report on individuals without financial means so that the individual can be placed on a court calendar for a reassessment of his or her bail.

**Policy B:** At the June 3, 2020 meeting Christy Craig and Nancy Lemcke of the Clark County Public Defender’s Office discussed unattainable bail conditions and cited the example of New Mexico, which has a mechanism that brings defendants back to court if a bail condition keeps him or her held longer than 24 hours after the court ordered them to be released. The pair proposed that Nevada adopt a similar mechanism that would automatically bring defendants back into court should some condition of pretrial release, with which they cannot comply, keeps them in detention.

**RECOMMENDATION NO. 9 — Draft legislation requiring a court to determine the ability of a defendant to pay a monetary condition of pretrial release. (Clark County Public Defender’s Office --Christy Craig and Nancy Lemcke)**

**Background Information for Recommendation No. 9**

During the June 3, 2020 meeting, Vice Chair Nguyen asked Ms. Craig and Ms. Lemcke about appropriate methods for determining the ability of a defendant to afford a monetary condition of pretrial release. Ms. Craig testified as to two options for determining the ability of a defendant to pay:

**Policy A:** Ms. Craig and Ms. Lemcke testified that the Clark County Public Defender’s Office often uses the federal poverty guidelines to determine a defendant’s ability to pay. The guidelines help to determine indigency and the guidelines further provide a method for requesting a fair percentage of the income of the defendant. Ms. Craig recommended using the federal poverty guidelines because they are established by the federal government and are easy to understand.

**Policy B:** Ms. Craig and Ms. Lemcke also testified that some jurisdictions use financial affidavits containing relevant information from a defendant to determine his or her ability to pay a monetary condition of pretrial release.

**RECOMMENDATION NO. 10 — Draft legislation requiring defendants to be afforded certain procedural protections. (Clark County Public Defender’s Office --Christy Craig and Nancy Lemcke; Washoe County Public Defender’s Office --Kendra Bertschy and Evelyn Grosenick)**

**Background Information for Recommendation No. 10**

During the June 3, 2020, Committee meeting, Christy Craig and Nancy Lemcke testified that *Valdez-Jimenez* requires procedural protections that are not presently uniform across Nevada. Namely, an individualized, adversarial hearing determining the pretrial release conditions of a defendant. Ms. Craig proposed that the Legislature statutorily mandate that the defendant: (1) be present at the hearing; (2) have counsel; and (3) have access to all the records that are in the possession of the State and the court.

At the March 3, 2020, meeting, Kendra Bertschy and Evelyn Grosenick testified to additional procedural protections. Specifically, they suggested that defendants be afforded counsel, the right to present evidence, and the right to cross-examine witnesses against them. During an individualized hearing, the State may present its evidence that the defendant should be released with conditions or that, by clear and convincing evidence, the defendant should be detained.

**RECOMMENDATION NO. 11 — Draft legislation requiring courts to make specific findings of fact under certain circumstances.** (Clark County Public Defender’s Office --Christy Craig and Nancy Lemcke; Washoe County Public Defender’s Office --Kendra Bertschy and Evelyn Grosenick)

**Background Information for Recommendation No. 11**

During the June 3, 2020, Committee meeting, Christy Craig and Nancy Lemcke of the Clark County Public Defender’s Office proposed that the Legislature should statutorily require courts to make specific findings as to the imposition of pretrial release or detention. They posited that *Valdez-Jimenez* requires a court to make findings when it makes a pretrial custody determination. The pair posed that the court must make findings on: (1) why the defendant is being released or detained; and (2) why any conditions of pretrial release are necessary, including how such conditions relate to the individual defendant. Specifically in regards to the imposition of a monetary condition of pretrial release, the court must make specific findings: (1) that the court has considered the ability of the defendant to pay; and (2) if monetary bail is set in an amount that the pretrial detainee cannot pay, findings as to both the necessity and amount of money bail imposed by the court.

Kendra Bertschy and Evelyn Grosenick of the Washoe County Public Defender’s Office proposed the same responsibility for the court, stating that the court must make specific findings justifying pretrial detention.

**C. PROPOSALS RELATING TO DATA COLLECTION**

**RECOMMENDATION NO. 12 — Draft legislation requiring collection and reporting of certain data relating to pretrial release.** (Triton Management Services --Marc Ebel; PLAN --Leslie Turner; Nevada Coalition to End Domestic and Sexual Violence --Serena Evans)

**Background Information for Recommendation No. 12**

At the March 3, 2020, Committee meeting, Mr. Ebel of Triton Management Services recommended that the Legislature require robust data collection on the pretrial process. Mr. Ebel proposed that “bad data” (e.g., potentially racially biased data) is being used to set bail, which introduces flaws into the bail system. Accordingly, an area for reform is data collection so that the Legislature knows who is in jail and why, how long defendants are in jail, what pretrial process are defendants afforded, and how pretrial success is measured.

Similarly, Leslie Turner of PLAN recommended at the June 3, 2020 meeting that the Legislature require collection and reporting of pretrial detention statistics that can be compiled into reports for public consumption. She proposed quarterly reports.

Moreover, Serena Evans, Policy Specialist with the Nevada Coalition to End Domestic and Sexual Violence (“NCEDSV”) during the June 3, 2020 meeting emphasized the safety of victims of crime, noting the most dangerous period for victims of domestic violence is after they have left the home or there has been an intervention, such as arrest of the defendant. She accordingly recommended researching the effectiveness of the various pretrial release conditions, such as GPS monitoring and prohibitions on the consumption of alcohol, as they relate to the safety of victims so that victims remain safe during pretrial processes.

#### **D. PROPOSALS RELATING TO REQUIRED CITATIONS IN LIEU OF JAIL**

**RECOMMENDATION NO. 13** — **Draft legislation reclassifying certain traffic offenses and certain misdemeanors as citations not punishable by jail time.** (Washoe County Public Defender’s Office --Kendra Bertschy and Evelyn Grosenick)

##### **Background Information for Recommendation No. 13**

At the March 3, 2020 Committee meeting, Kendra Bertschy and Evelyn Grosenick of the Washoe County Public Defender’s Office proposed that the Legislature reclassify non-aggravated traffic offenses as citations not punishable by jail time in order to mitigate the consequences of detaining low-risk defendants. The pair testified that they often see defendants who have unnecessarily spent several days in jail on traffic citations. Ms. Bertschy and Ms. Grosenick also proposed that the Legislature require mandatory citation in lieu of jail time for certain misdemeanors.

#### **E. PROPOSALS RELATING TO THE RIGHTS OF VICTIMS OF CRIME**

**RECOMMENDATION NO. 14** — **Draft legislation prohibiting the imposition of bail until 24 hours after a defendant’s arrest for a crime committed against a person.** (City of Henderson --Marc Schifalacqua)

##### **Background Information for Recommendation No. 14**

###### **Tab H – City of Henderson Presentation on Current Pretrial Release Process**

Marc Schifalacqua, Senior Assistant City Attorney, City of Henderson, testified at the March 3, 2020, meeting about the rights of victims of crime. As part of his recommendations to the Committee he suggested that bail not be permitted until 24 hours after a defendant is arrested for a crime against a person.

**RECOMMENDATION NO. 15 — Draft legislation to create a mechanism allowing the victim or prosecutor to request a protection order in the pretrial release process and to allow the order to be immediately transmitted to law enforcement.** (City of Henderson -- Marc Schifalacqua; Clark County Public Defender's Office --Christy Craig and Nancy Lemcke)

**Background Information for Recommendation No. 15**

During the Committee meeting held on March 3, 2020, Marc Schifalacqua recommended that the Legislature adopt a mechanism that would allow victims or prosecutors, during the pretrial risk assessment process, to request a protection order to ensure the victim's safety. Mr. Schifalacqua proposed that pretrial release should not be permitted until the victim or prosecutor has the opportunity to make such as request.

Additionally, at the June 3, 2020, Committee meeting, Senator Melanie Scheible asked Christy Craig and Nancy Lemcke of the Clark County Public Defender's Office about delays in enforcing release orders when an offender contacts a victim after having been directed not to have such contact. The pair responded by proposing that more immediate ramifications for violating no contact orders could be appropriately codified. They specifically proposed making release orders operate in the way a TRO/TPO would, in that it is communicated to the police so that the order is in the police database and is immediately enforceable upon a victim's 911 call.

**RECOMMENDATION NO. 16 — Include a policy statement in the final report encouraging education relating to risk factors for victims of domestic and sexual violence.** (NCEDSV --Serena Evans)

**Background Information for Recommendation No. 16**

At the June 3, 2020 meeting, Serena Evans, Policy Specialist with the NCEDSV, recognized the need for pretrial release reform, but emphasized the violence that survivors of domestic and sexual violence face from offenders. She raised the concern that the pretrial process can be a particularly dangerous time because the most dangerous period for domestic violence victims is after they have left the home or there has been an intervention, such as arrest of the defendant. Ms. Evans noted that 70% of domestic violence murders occur after the victim has left the home/ended the relationship. Ms. Evans recommended enhancing education on the risk factors victims face at various stages of the pretrial process, specifically educating court staff who make risk and bail decisions on how to access domestic violence information and on what domestic violence risks look like.

**RECOMMENDATION NO. 17** — Draft a letter urging the Nevada Supreme Court to require the use of a risk assessment tool to assess the domestic violence risk of a defendant. (NCEDSV --Serena Evans)

**Background Information for Recommendation No. 17**

At the Committee meeting held on June 3, 2020, Serena Evans of NCEDSV recommended the adoption of specific danger assessment tools which assess a defendant's domestic violence risks. Specifically, Ms. Evans cited the Ontario Domestic Assault Risk Assessment (ODARA) and the Jackie Campbell Danger Assessment tools. The risk assessment tools could be used in release decisions as an additional measure to more accurately evaluate a defendant's risk to a victim.

**F. PROPOSALS RELATING TO FAILURE TO APPEAR**

**RECOMMENDATION NO. 18** — Draft legislation providing a 48-hour grace period after a defendant fails to appear before issuing an arrest warrant. (Washoe County Public Defender's Office --Kendra Bertschy and Evelyn Grosenick)

**Background Information for Recommendation No. 18**

At the Committee meeting held on March 3, 2020, Kendra Bertschy and Evelyn Grosenick of the Washoe County Public Defender's Office recommended that the Legislature codify a 48-hour grace period in which defendants can reschedule their appearance after a missed court date. Ms. Grosenick testified that some courts already do this in practice by holding an arrest warrant request for a period of time to see if the defendant appears or can be contacted.

**G. PROPOSALS RELATING TO ALTERNATIVES TO IN-PERSON BAIL HEARINGS**

**RECOMMENDATION NO. 19** — Draft a letter urging the Nevada Supreme Court to permit electronic alternatives to in-person bail hearings. (Clark County Public Defender's Office --Christy Craig and Nancy Lemcke)

**Background Information for Recommendation No. 19**

At the Committee meeting on June 3, 2020, Chair Harris asked if Nevada has sufficient resources (e.g., judges, public defenders) to comply with the *Valdez-Jimenez* decision. Christy Craig and Nancy Lemcke recommended adoption of electronic processes to facilitate hearings, especially in Northern Nevada where justice courts may be separated by hundreds of miles. Videoconference (e.g., Zoom, Skype) or telephonic hearings could be used to allow bail and detention hearings to occur



remotely, and attorneys could have digital access to their client and that client's information without having to always have an in-person hearing.