IN THE SUPREME COURT OF THE STATE OF NEVADA

CITY OF HENDERSON, Petitioner, vs. BERNARDO ARMENDAREZ, JACOB ALEXANDER NAVARRO-REYES, NAYIB WATSON, LOUIS ANTHONY DELOSRIOS, JR., VIRGIL CRISTOBAL, HUNTER ALEXIS DOOLEY, AND JACOB VERNON HARDY, Respondents.	)	Electronically Filed Oct 28 2025 02:49 PM Elizabeth A. Brown Clerk of Supreme Court
	) **CASE NO: 89958**	

BRIEF OF AMICI CURIAE CLARK COUNTY PUBLIC DEFENDER, CLARK COUNTY SPECIAL PUBLIC DEFENDER AND WASHOE COUNTY PUBLIC DEFENDER IN SUPPORT OF RESPONDENTS

NANCY L. LEMCKE
Clark County Public Defender
Nevada Bar # 5416
WILLIAM M. WATERS
Chief Deputy Public Defender
Nevada Bar # 9456
309 S. Third St.
Las Vegas, Nevada 89101
Attorneys for Amicus Curiae,
Clark County Public Defender

EVELYN GROSENICK
Washoe County Public Defender
Nevada Bar # 12217
350 S. Center St. 5th Floor
Reno, Nevada 89501-2103
Attorney for Amicus Curiae,
Washoe County Public Defender

VIRGINIA EICHACKER
Clark County Special Public Defender
Nevada Bar # 4977
330 S. Third St. 8th floor.
Las Vegas, Nevada 89101
Attorney for Amicus Curiae,
Clark County Special Public Defender

KATHERYN HICKMAN
Washoe County Alternate Public Defender
Nevada Bar # 11460
350 S. Center St. 6th Floor
Reno Nevada, 89501
Attorney for Amicus Curiae,
Washoe County Alternate Public Defender

NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in Nevada Rule of Appellate Procedure 26.1(a), and must be disclosed. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

1. Clark County Public Defender
2. Clark County Special Public Defender
3. Washoe County Public Defender
4. Washoe County Alternate Public Defender

NANCY M. LEMCKE
CLARK COUNTY PUBLIC DEFENDER

By: */s/ William M. Waters*
WILLIAM M. WATERS, #9456
Chief Deputy Public Defender
Counsel for Amici

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

CASES

STATUTES

IN THE SUPREME COURT OF THE STATE OF NEVADA

CITY OF HENDERSON, Appellant, vs. BERNARDO ARMENDAREZ, JACOB ALEXANDER NAVARRO-REYES, NAYIB WATSON, LOUIS ANTHONY DELOSRIOS, JR., VIRGIL CRISTOBAL, HUNTER ALEXIS DOOLEY, AND JACOB VERNON HARDY, Respondents.	)	**CASE NO: 89958**

BRIEF OF AMICI CURIAE CLARK COUNTY PUBLIC DEFENDER, CLARK COUNTY SPECIAL PUBLIC DEFENDER, WASHOE COUNTY PUBLIC DEFENDER. AND WASHOE COUNTY ALTERNATE PUBLIC DEFENDER IN SUPPORT OF REPONDENTS

NANCY L. LEMCKE
Clark County Public Defender
Nevada Bar # 5416
WILLIAM M. WATERS
Chief Deputy Public Defender
Nevada Bar # 9456
309 S. Third St.
Las Vegas, Nevada 89101
Attorneys for Amicus Curiae,
Clark County Public Defender

EVELYN GROSENICK
Washoe County Public Defender
Nevada Bar # 12217
350 S. Center St. 5th Floor
Reno, Nevada 89501-2103
Attorney for Amicus Curiae,
Washoe County Public Defender

VIRGINIA EICHACKER
Clark County Special Public Defender
Nevada Bar # 4977
330 S. Third St. 8th floor.
Las Vegas, Nevada 89101
Attorney for Amicus Curiae,
Clark County Special Public Defender

KATHERYN HICKMAN
Washoe County Alternate Public Defender
Nevada Bar # 11460
350 S. Center St. 6th Floor
Reno Nevada, 89501
Attorney for Amicus Curiae,
Washoe County Alternate Public Defender

IDENTITY OF AMICI CURIAE & STATEMENT OF INTEREST

The Clark County Public Defender's Office, the Clark County Special Public Defender's Office, the Washoe County Public Defender's Office, and the Washoe County Alternate Public Defender's Office are political subdivisions of the State of Nevada and may file an *amicus* brief without the consent of the parties or leave of the court pursuant to NRAP 29(a).

I. The Clark County Public Defender's Office is statutorily and constitutionally obligated to represent all persons within Clark County who are facing incarceration and unable to afford counsel. The obligation includes provisional appointment for detention hearings under NRS 178.4849 for **all persons** appearing in the Justices' Courts in the various townships within Clark County.

The City of Henderson asserts on appeal that the Nevada Legislature violated the Nevada Constitution by enacting NRS 178.4849, which in pertinent part, requires justices' courts and municipal courts to conduct pretrial detention hearings within 48 hours of a suspect's arrest, provided the suspect is not administratively released or unable to post monetary bail to secure release.

Resolution of the issues raised in the City of Henderson's Appeal will significantly impact the Clark County Public Defender's practice and clients,

including its provisional appointments, in Clark County Courts. As the Public Defender's Office represents the vast majority of defendants arrested and accepts nearly all provisional appointments at pretrial detention hearings, a material deviation in the process these defendants are entitled to after arrest will impact virtually all individuals arrested in Clark County who are unable to immediately post bail. Thus, the Clark County Public Defender's Office has a crucially compelling interest in determining that NRS 178.4849 does not violate the Nevada Constitution and ensuring that individuals arrested in Clark County are not subject to a protracted and unlawful detention. This Amicus Brief supports Respondent's argument that the district court correctly ruled that NRS 178.4849 does not violate the separation of powers doctrine and does not violate Nevada Constitution Article 1, Section 8A (Marsy's Law).

I. The Clark County Special Public Defender's Office ("SPD") is appointed to represent indigent clients in criminal cases charging Category A felonies when the Clark County Public Defender cannot represent the client due to a conflict of interest. The SPD includes highly trained and experienced attorneys, who handle the most serious cases—those that carry a potential sentence of life in prison or the death penalty. The SPD firmly supports the position that timely bail hearings are imperative to ensuring

individuals who have only been accused, but remain innocent, are not subject to a protracted and unlawful detention. Accordingly, the SPD joins this brief to strongly support Respondents' position that the district court correctly concluded that NRS 178.4849 does not violate the separation of powers doctrine and does not violate the Nevada Constitution.

II. The Washoe County Public Defender's Office is a duly constituted county public defender's office created pursuant to NRS 260.010, *et. seq*. Since its inception on July 1, 1969, it has provided zealous and holistic representation to indigent people charged with crimes in Washoe County, Nevada, from misdemeanors to capital murder. Attorneys from the Washoe County Public Defender's Office appear at the Washoe County Jail every day of the year to represent the important liberty interests of individuals who are making their first court appearance following arrest. The Washoe County Public Defender's Office joins this amicus brief in support of the proposition that NRS 178.4849 is constitutionally sound.

III. The Washoe County Alternate Public Defender's Office protects the constitutional rights of people who are indigent that are charged with crimes in Washoe County. This office represents adults charged with all levels of crimes, from misdemeanors to capital murder, when a conflict of interest arises with the Washoe County Public Defender's Office. All clients

represented by the Alternate Public Defender's Office are affected by the bail decisions made after arrest, and this office has an interest in a determination that NRS 178.4849 is constitutional and that our clients' rights are protected by a prompt bail hearing.

ARGUMENT

I. NRS 178.4849 Does Not Violate Separation of Powers Under the Nevada Constitution Art. 3, § 1.

Nevada's Constitution provides for three coequal branches of government and expressly prohibits each branch of government from exercising powers belonging to another branch of government. Nev. Const. art. 3, § 1. The legislative branch enacts laws, the executive branch is tasked with carrying out and enforcing those laws, and judicial branch has authority to hear and determine justiciable controversies.[1] N. Lake Tahoe Fire v. Washoe Cnty. Comm'rs, 129 Nev. 682, 687 (2013).

Relevantly, the Nevada Legislature has broad power over criminal law and criminal procedure. Indeed, the legislature has exclusive authority to define crimes and penalties. Floyd v. Department of Corrections, 139 Nev. 355, 338 (2023). Additionally, "the legislature clearly has the power to regulate procedure in criminal cases." Cowell v. State, 112 Nev. 807, 813 (1996). The legislature can also limit judicial discretion in certain areas. Mendoza-Lobos v. State, 125 Nev. 634, 640 (2009). Most importantly, it is the

[1] "Judicial power includes the authority to enforce any valid judgment, decree or order." Galloway v. Truesdell, 83 Nev. 13, 20 (1967).

Legislature's prerogative to implement provisions concerning the fundamental right to bail expressed in the State constitution. St. Pierre v. Sheriff, Washoe County, 90 Nev. 282, 286 (1974) (citing Nev. Const. Art. 1, § 7). In contrast, courts are constitutionally empowered to interpret and enforce the Nevada Constitution. Mack v. Williams, 138 Nev. 854, 862 (2022) (citing Wren v. Dixon, 40 Nev. 170, 187 (1916)).

A. The Legislature has consistently codified laws regulating the right to bail.

In Nevada, with few exceptions, all persons arrested for criminal offenses are **entitled** to bail. See Nev. Const. Art. 1, § 7 ("All persons shall be bailable by sufficient sureties; unless for Capital Offenses or murders punishable by life imprisonment without possibility of parole when the proof is evident or the presumption great."); NRS 178.484 ("Except as otherwise provided in this section, a person arrested for an offense other than murder of the first degree **must be admitted to bail**.") (emphasis added). Accordingly, "[p]retrial release and detention decisions implicate a liberty interest [under both Nev. Const. Art. 1, § 8[2] and U.S. Const. amend. XIV, §

[2] Nev. Const. Art. 1, § 8(2) states, "No person shall be deprived of life, liberty, or property, without due process of law."

1]—conditional pretrial liberty—**that is entitled to procedural due process protections**." Johnson v. Eighth Jud. Dist. Ct., 138 Nev. 700, 706 (2022) (emphasis added) (quoting Holland v. Rosen, 895 F.3d 272, 297 (3rd Cir. 2018)); see also Chittenden v. Justice Ct. Pahrump Township, 140 Nev. ___, ___, 544 P.3d 919, 929 (Ct. App. Nev. 2024).

The Nevada Legislature has consistently enacted laws regarding the due process right to bail and this Court has never indicated doing so violates separation of powers. Indeed, pursuant to its constitutional mandate, in 1971 the Legislature amended NRS 178.484 to add subsection 3 which stated, "Where a person with no prior conviction for any offense is charged with a misdemeanor he may be released without bail at the discretion of the sheriff or chief of police or his designated deputy by filing an agreement to appear at the time and place specified in such agreement." 1971 Stat. Nev. Ch. 278, § 1, at 496. The Legislature further amended NRS 178.484(3) in 1975 to include, "Where a person with no prior conviction for any offense is charged with a misdemeanor he may be released without bail at the discretion of the sheriff or chief of police or his designated deputy, pursuant to guidelines established by a court of competent

jurisdiction, by filing an agreement to appear at the time and place specified in such agreement."[3] 1975 Stat. Nev. Ch. 643, § 4, at 1201.

In Application of Floyd, 413 F.Supp.574 (D. Nev. 1976), the Federal District Court for Nevada addressed the 1975 amendments to NRS 178.484. A Nevada arrestee charged with a misdemeanor, who had no prior convictions, was not released without bail by the Reno Sheriff. Id. at 575. The arrestee petitioned for Habeas Corpus in the Federal District court claiming, among other things, that NRS 178.484(3) "unconstitutionally usurped a judicial function." The court disagreed noting while "[g]ranting bail and fixing its amount are judicial or quasi-judicial functions [,] the Legislature has power to define the jurisdiction and powers of the courts… [t]hat is also true with respect to bail." Id. at 576. Ultimately, the court concluded

[3] The ability for local police to release a suspect without bail is now codified in NRS 178.4847 which states, "A court of competent jurisdiction may adopt an administrative order relating to the circumstances under which a person may be released from custody without a pretrial release hearing, including, without limitation, those circumstances under which a sheriff or chief of police may release, without bail, a person charged with a misdemeanor." In 2023, the Justices' Courts from all townships in Clark County issued an administrative order to address circumstances where persons arrested for misdemeanors could be released without bail. See, <https://cms8.revize.com/revize/clarkcountyjc/Document_center/ADMINISTRATIVE%20ORDERS/AO%2023-01.pdf?t=202301262031520&t=202301262031520>, accessed October 13, 2025.

there was no constitutional infirmity in the Legislature assigning pretrial release decisions to sheriffs and police chiefs.[4] Id.

In addition to administrative release, this Court has recognized it is permissible to establish "standard" bail schedules where persons arrested can post money bail to secure release, without seeing a judge at all. Valdez-Jimenez v. Eighth Jud. Dist. Ct., 136 Nev. 155, 163 (2020).[5] The Henderson Detention Center – where almost all arrestees who appear in Henderson Municipal Court – and the Clark County Detention Center, have standard bail schedules. See < https://www.leg.state.nv.us/App/InterimCommittee/REL/Document/13005>, (accessed October 9, 2025); <https://clarkcountybar.org/wp-content/uploads/2020/12/LVJC-Criminal-Bail-Schedule-OCTOBER-2020-OFFICIAL.pdf>, (accessed October 9, 2025). Accordingly,

[4] NRS 178.484 has been amended numerous times since 1975. Currently, it includes provisions requiring 12 hour holds for persons arrested for domestic violence or driving under the influence. See NRS 178.484(6)-(7). In 1986, Nevada Attorney General Brian McKay issued an opinion advising the 12-hour mandatory "cooling off" period in NRS 178.484(3) for those arrested for domestic violence does not violate a suspect's right to bail in Nev. Const. Art. 1, § 7, or a suspect's due process rights in Nev. Const. Art. 1, § 8. See 1986 Nev. Op. Atty. Gen. 1 (1986). Although attorney general opinions are not binding on this court, they are persuasive. See Clark County Office of Coroner/Medical Examiner v. Las Vegas Review-Journal, 136 Nev. 44, 57 n. 5 (2020).

[5] NRS 178.484(7), (9) sets a "standard" bail for those charged with Battery Domestic Violence and Driving Under the Influence.

anyone arrested for a misdemeanor within the Henderson Municipal Court's jurisdiction could either be released by the jail administratively or pay a money bail to secure release before any detention hearing could occur.[6]

B. Valdez-Jimenez interpreted the constitutional due process protections afforded defendants who are detained pretrial.

Prior to passing NRS 178.4849, there was no statutory right to a detention hearing within a particular time. Rather, pursuant to NRS 171.178(1), arrested persons were only required to be taken before a magistrate "without unnecessary delay." If the person was not brought before a magistrate within 72 hours (excluding non-judicial days), the prosecutor had to explain the delay and the magistrate could, but did not have to, release the person without bail. NRS 171.178(3)(a)-(b). Nevertheless, NRS 171.178(5) authorized release with bail without appearing before a magistrate. ("[W]here the defendant can be admitted to bail without appearing personally before a magistrate, the defendant must be so admitted with the least possible delay, and

[6] Neither the City nor *amici* take issue with these legislatively created bail procedures nor complain that these procedures occur without input from any alleged victims in supposed contravention of Nev. Const. Art. 1, § 8A.

required to appear before a magistrate at the earliest convenient time thereafter.").[7]

In Valdez-Jimenez two defendants charged *via* criminal complaint had bail set by magistrates in the Las Vegas Justice Court. Valdez-Jimenez, 136 Nev. at 156. Subsequently, the State secured indictments against each and at the return on the indictments, the State requested bailable warrants for the same amount that had been set in the justices' court. Id. Neither defendant nor their attorneys were present at the return on the indictment. Id. Later, at each defendant's arraignment in the district court, they sought to reduce or vacate the bail set at the indictment returns arguing the bail was excessive and violated due process and equal protection. Id. at 157. The court denied each defendants' request claiming so long as the bail set by the judge at the indictment return was not "wrong," it could not modify the amount absent the defendant demonstrating "good cause." Id.

[7] NRS 171.178 does not mandate when the initial arraignment must occur. Rather, it provides if the defendant is not brought before a magistrate within 72 hours for arraignment, the magistrate "may" release the defendant without bail if the State does not adequately explain the delay. By these explicit terms, 72 hours is the maximum time the Legislature deemed acceptable before the State potentially forfeits the right to detain a defendant pending trial. However, nothing within NRS 171.178 suggests an arraignment could not occur earlier than 72 hours and this Court has never found NRS 171.178 constitutionally unsound.

The defendants petitioned for a writ of mandamus in this Court arguing the district court manifestly abused its discretion. Id. This Court exercised its discretion to entertain the petition and clarified the constitutionality of Nevada's bail process. Id. at 161.

This Court recognized the constitutionality of bail statutes passed by the legislature. However, this Court also recognized when persons arrested, and presumed innocent, are not released by the Sheriff, or cannot afford to post monetary bail, their continued detention without certain due process protections violates Nev. Const. Art. 1, § 7. Id. at 156 ("When bail is set in an amount the defendant cannot afford, however, it deprives the defendant of his or her liberty and all its attendant benefits, despite the fact that he or she has not been convicted and is presumed innocent."). Thus, exercising judicial review, this Court interpreted and announced the due process protections necessary to effectuate the constitutional right to bail for persons detained and unable to post monetary bail. Id. ("To safeguard against pretrial detainees sitting in jail simply because they cannot afford to post bail, we conclude that the following due process protections are constitutionally required.").

First, this Court held a person arrested and not released administratively or unable to post monetary bail, is constitutionally entitled "to a prompt individualized determination on his or her pretrial custody status." Id. In making the individualized determination, the judicial officer must hold an adversarial hearing where the arrestee can present evidence concerning relevant bail factors. Id. This Court explained the judicial officer "must consider the factors set forth in NRS 178.4853 and may impose bail only if the State proves by clear and convincing evidence that it is necessary to ensure the defendant's presence at future court proceedings or to protect the safety of the community, **including the victim and the victim's family**."[8] Id. (emphasis added). If a judge believes monetary bail is necessary, he must consider the suspect's financial resources when setting the amount and state his reasons for the amount on the record. Id. This Court noted bail hearings should occur, at minimum, at a suspect's initial arraignment, but also explicitly acknowledged the legislature had not statutorily designated a time frame for the initial arraignment for those under indictment. Id. at 163. Nevertheless,

[8] This Court specifically referenced Nev. Const. Art. 1, § 8A(1)(c), the portion of Marsy's law that requires courts to consider a victim's safety before imposing bail. Id. at 162.

quoting Tellis v. Sheriff, 85 Nev. 557, 559-60 (1969),[9] this Court presumed "that an arraignment will be conducted within 'a reasonable time.'" Id. at 163-64.

In response to Valdez-Jimenez, the Nevada Legislature, pursuant to its constitutional authority, passed NRS 178.4849 which codified the right to a detention hearing for those eligible for bail,[10] who were not administratively released or were unable to pay monetary bail, within 48 hours after arrest. Recognizing there could be circumstances where a hearing cannot be conducted within 48 hours, the Legislature provided that the hearing could be continued by either party, or the court, for good cause or upon stipulation. NRS 178.4849(2)(a)-(b). For convenience, hearings can be conducted *via* remote communication. NRS 178.4849(4)-(5). Finally, the Legislature codified the due process protections afforded a defendant

[9] In Tellis, the Court noted because the legislature had not statutorily fixed a time for which a defendant had to be arraigned, "a reasonable time will be presumed before which an arraignment must be conducted." Id. at 560. Thus, the Court recognized the legislative authority to fix time periods for criminal procedures.

[10] Not all arrestees are entitled to bail. For example, persons arrested for a felony offense while on probation for a different offense are not entitled to bail upon arrest. NRS 178.484(2).

at the detention hearing, as announced in Valdez-Jimenez, by amending NRS 178.4851.[11]

This Court, to the extent it could, did not announce a "rule" in Valdez-Jimenez that detention hearings had to occur at the initial arraignment or no earlier than 72 hours. Rather, this Court merely explained what due process protections are afforded a defendant at the hearing – whenever it occurs. In the absence of a statute explicitly fixing the time for the hearing, this Court merely presumed the detention hearing would occur the first time the defendant appeared before a judge, i.e., the initial arraignment.

Before a separation of powers problem can occur, the Court must determine whether a statute conflicts with a procedural rule. See Lyft, Inc. v. Eighth Jud. D. Ct. (Davis), 137 Nev. 832, 835 (2021). If the matter is substantive, and not procedural, then the statute controls as substantive rights are the legislature's prerogative. See State v. Hansen, 215 Ariz. 287, 289, 160 P.3d 166, 168 (2007) ("…when a statute and rule conflict, we traditionally inquire into whether the matter regulated can be characterized as substantive or procedural, the former being the legislature's prerogative and the latter the province of

[11] 2021 Nev. Stat. Ch. 532, § 3, at 3579.

this Court."). Here, beyond the fact there is no conflict between NRS 178.4849 and any procedural rule, in Valdez-Jimenez this Court recognized the right to a detention hearing to address bail is a substantive right requiring certain procedural protections. Valdez-Jimenez, 136 Nev. at 162. Thus, NRS 178.4849, which addresses a substantive right, cannot violate separation of powers

After NRS 178.4849's passage, this Court recognized the Legislature had the authority to enact time limits for detention hearings.[12] In Meyer v. Balaam, 2021 WL 2769034, *1, docket. 81139 (Nev. Sup. Ct. July 1, 2021) (unpublished),[13] the defendant did not receive a bail hearing until 12 days after her arrest. She petitioned the district court for a writ arguing her "prompt" bail hearing as required under Valdez-Jimenez had to occur within 48 hours of her arrest. Id. The district denied the petition indicating it believed 72-business hours was the appropriate time limit. Id. Meyer pleaded

[12] In Johnson v. Eighth Jud. Dist. Ct., 138 Nev. 700, 709 (2022), this Court also recognized the Legislature's authority over bail, noting "we decline Johnston's invitation to adopt distinctions set forth in the federal Bail Reform Act: **had the Legislature intended for Nevada's bail laws to mirror analogous federal laws in this regard, it would have done so**." (Emphasis added).

[13] Although Meyer is unpublished, it is citable as persuasive authority. See NRAP 36(c)(3).

guilty to a misdemeanor and appealed the district court's ruling to this Court. Id.

This Court rejected Meyer's appeal noting:

> Assembly Bill (A.B.) 424 was enacted by the Legislature during the 2021 legislative session. 2021 Nev. Stat., ch. 375, § 5.7, at [2230]. Section 5.7 of A.B. 424 provides in relevant part that "a court shall, **within 48 hours** after a person has been taken into custody, hold a pretrial release hearing ... to determine the custody status of the person." A.B. 424, 81st Leg. (Nev. 2021). Because A.B. 424 establishes that detainees must be provided a pretrial release hearing within 48 hours, as Meyer requests, we conclude that this appeal is moot. For the same reason, we further conclude that Meyer fails to establish "there is a likelihood that a similar issue will arise in the future."
>
> Id. (quoting Valdez-Jimenez, 136 Nev. at 158) (emphasis in original).

Essentially, the Meyer Court found no constitutional infirmity in the Legislature requiring detention hearings within 48 hours after arrest pursuant to NRS 178.4849, and thus the issue regarding what constitutes a "prompt" detention hearing, was moot. If this Court believed the Legislature lacked the constitutional authority to codify the right to a 48-hour detention hearing, or that the Court had announced a "rule" in Valdez-Jimenez that the Legislature

unconstitutionally interfered with, this Court would have said so. See e.g., Koller v. State, 122 Nev. 223, 228-29 (2006) (recognizing this Court will address jurisdictional problems *sua sponte* on appeal); Palmieri v. Clark County, 131 Nev. 1028, 1047 n. 14 (2015) (appellate court "has the discretion to consider issues of constitutional dimension *sua sponte* notwithstanding the parties' failure to raise such issues before the district court or on appeal."); Gordon v. Geiger, 133 Nev. 542, 545 n. 3 (2017).

Analogous litigation in another state is instructive as well. In 2023, the Illinois Legislature passed Public Acts 101-652 and 102-110 which radically changed the State's pretrial release provisions to include abolishing monetary bail. See Rowe v. Raoul, 469 Ill.Dec. 248, 251-252, 223 N.E.3d 1010, 1013-14 (2023). After these laws passed, various State's Attorneys and Sheriffs filed a lawsuit against the Attorney General, the Governor, House Speaker, and Senate President, arguing pertinently that the pretrial release provisions violate the bail clause of the Illinois Constitution, violate the Illinois Constitution's crime victims' rights clause, and violate the separation of powers clause. Id. at 252, 223 N.E.3d at 1014. The trial court found the pretrial release provisions violated the Illinois Constitution's

bail clause by "stripping courts of the authority to even consider monetary bail as a condition of release." Id. at 253, 223 N.E.3d. at 1015. The court also found "eliminating monetary bail in all situations in Illinois[] prevents the court from effectuating the constitutionally mandated safety of the victims and their families." Id. Finally, the court found "because bail is an administrative matter for the courts, the legislature encroached upon the authority of the judiciary." Id. at 254, 223 N.E.3d. at 1016. The defendants appealed to the Illinois Supreme Court. Id.

On appeal, the Illinois Supreme Court found the legislature's pretrial release laws did not violate separation of powers doctrine.[14] First, the Court agreed the judiciary has the power, in some cases, to deny or revoke bail because that power is "incident of their power to

[14] The court also found the public acts did not violate the Illinois constitution's bail clause because nothing in the constitution's plain text required "money" bail, just "sufficient sureties." Id. at 256, 223 N.E.3d. at 1018. Moreover, the court recognized prosecutors could still seek to detain an individual pending trial based upon the "nature and seriousness of the real and present threat to the safety of any person or persons [] that would be posed by the defendant's release." Id. at 257, 223 N.E.3d. at 1019. Furthermore, the court found the laws did not violate the victim's right clause of the Illinois constitution because the pretrial release provisions "require a court to consider the 'nature and seriousness of the real and present threat to the safety of any person or persons that would be posed by the defendant's release,' including crime victims and their family members[.]" Id. at 258, 223 N.E.3d. at 1020.

manage the conduct of proceedings before them." Id. at 260, 223 N.E.3d. at 1022 (citing People ex rel. Hemmingway v. Elrod, 60 Ill.2d 74, 79, 322 N.E.2d 837, 840 (1975)). Nevertheless, the court noted "the legislature has long regulated the bail system." Id. at 260, 223 N.E.3d. at 1022. Indeed, the Illinois legislature had amended bail laws over 20 times in nearly six decades and none of the litigants complaining about the revised pretrial release laws had ever suggested the legislature lacked the power to do so. Id. By analogy, the court noted although sentencing decisions are a judicial function, the legislature nevertheless has the power to restrict judicial sentencing decisions by establishing mandatory sentences.[15] Id. at 260-61, 223 N.E.3d. at 1022-23. Accordingly, the Illinois Supreme Court recognized while the judiciary has the constitutional authority to make bail determinations, the Illinois Legislature had the constitutional authority to enact laws regulating bail practices.

C. Justices' courts and municipal courts are courts of limited jurisdiction whose authority is granted by the Legislature.[16]

[15] This Court has similarly recognized, "the Legislature can 'completely remove any judicial discretion to determine a criminal penalty by creating mandatory sentencing schemes.'" State v. Second Jud. Dist. Ct. (Hearn), 134 Nev. 783, 786 (2018) (quoting Mendoza-Lobos, 125 Nev. at 640).

[16] Parsons v. State, 116 Nev. 928, 933 (2000).

In addition to its constitutional mandate to enact bail laws, the legislature has sole authority, under Nev. Const. Art. 6, § 1, Art. 6, § 8(1), and Art. 6, § 9, to create justices' and municipal courts and establish their jurisdiction. Moreover, Nev. Const. Article 4, §§ 20[17] and 21[18], provides that the Legislature may enact general laws "[r]egulating the **practice** of courts of justice." State v. Second Jud. Dist. Ct. (Marshall), 116 Nev. 953, 960 (2000) (emphasis added). Municipal courts, if established, "must conform, as nearly as practicable, to the practice and proceedings of justice courts in similar cases." NRS 5.073(1).

This Court has long acknowledged the Legislature's constitutional authority to regulate the jurisdiction and practice in the justices' court, and by extension municipal courts, without violating separation of powers. E.g., Grace v. Eighth Jud. Dist. Ct., 132 Nev.

---

[17] Article 4, § 20 states, "The legislature shall not pass local or special laws in any of the following enumerated cases--that is to say: Regulating the jurisdiction and duties of justices of the peace and of constables, and fixing their compensation; For the punishment of crimes and misdemeanors; Regulating the practice of courts of justice; Providing for changing the venue in civil and criminal cases[.]"

[18] Article 4, § 21 states, "In all cases enumerated in the preceding section, and in all other cases where a general law can be made applicable, all laws shall be general and of uniform operation throughout the State."

511, 517 (2016) ("[a] justice court has the direct authority granted to it by statute and also has limited inherent authority to act in a particular manner to carry out its authority granted by statute.") (Quoting State v. Sargent, 122 Nev. 210, 214 (2006)).[19]

As an example of the Legislature's authority to enact procedural time limits in the justices' courts, NRS 171.196(2) states pertinently, "If the defendant does not waive [preliminary] examination, **the magistrate shall hear the evidence within 15 days**, unless for good cause shown the magistrate extends such time." (Emphasis added). When there is no good cause to continue a preliminary hearing beyond 15 days, the statute "reflects a nondiscretionary obligation" to conduct the preliminary hearing within 15 days after arraignment. Chittenden, 140 Nev. at ___, 544 P.3d at 932. The failure to comply with good cause requirements when seeking to continue the preliminary hearing beyond 15 days creates illegal detention which divests the justice court of jurisdiction over the defendant. Sheriff v. Blackmore (Sepulveda

[19] Grace also recognized the Legislature's ability to procedurally authorize when and how appeals from justice court could be taken to the district court. Id. at 518 (citing NRS 189.120). Under NRS 266.595, the Legislature has authorized appeals from municipal courts to the district court as well.

and Johnson), 99 Nev. 827, 830 (1983)6; State v. Nelson, 118 Nev. 399, 403-04 (2002).

Pursuant to its constitutional authority, the Legislature has given justices of the peace and municipal court judges the authority, and thus the obligation, to conduct detention hearings. Under NRS 4.370(5)(a)-(b), the Legislature gave justices of the peace jurisdiction to conduct detention hearings for any township within the county and for municipal courts. The Legislature has given municipal court judges jurisdictional authority to conduct detention hearings for the justice courts as well. NRS 5.050(6). Accordingly, justices' courts and municipal courts are constitutionally required to conduct detention hearings in accordance with NRS 178.4849.

If this Court accepts the argument that the separation of powers doctrine prohibits the Legislature from enacting any laws regulating criminal practice and procedure – and specifically the timing of certain procedures – then countless statutes containing time limits would be effectively void. Indeed, under this paradigm, every justice and municipal court in Nevada would be free to create its own procedural rules and set detention hearings at any time it believes to be "prompt." This would produce inequitable results depending upon the

jurisdiction where an arrestee is detained. The Nevada Constitution does not sanction such a result

D. NRS 178.4849 does not unconstitutionally interfere with the justices' courts or municipal courts' inherent powers.

Beyond expressed powers, each government branch "possesses inherent and incidental powers that are properly termed ministerial." Blackjack Bonding v. City of Las Vegas Municipal Court, 116 Nev. 1213, 1221-22 (2000). "Ministerial functions are methods of implementation to accomplish or put into effect the basic function of each Department." Galloway, 83 Nev. at 21. Examples of ministerial functions include "proscribing any and all rules necessary or desirable to handle the business of the courts or their judicial functions." Id. at 23; see also Bowman v. Eighth Jud. Dist. Ct., 102 Nev. 474, 478 (1986) ("the [district court] clerk has a ministerial duty to accept and file documents."); City of Sparks v. Sparks Mun. Court, 129 Nev. 348, 365-66 (2013) (municipal court, and not city government, has inherent ministerial authority to manage its employees); State v. Frederick, 129 Nev. 251, 255-56 (2013) ("allowing the judiciary to determine the subordinate or administrative duties that may be assigned to [hearing] masters is a ministerial function[.]").

NRS 178.4849 does not interfere with justices' or municipal courts' inherent ministerial power. NRS 178.4849 does not, explicitly or implicitly, interfere with the Justices' Court or Municipal Courts ability to staff its courts to effectuate its obligation to conduct detention hearings within 48 hours. If the Henderson Municipal Court cannot conduct detention hearings within 48 hours, it can – pursuant to its inherent authority – hire more staff to meet its obligation to do so. Moreover, the Henderson Municipal Court can collaborate with any justice court in Clark County to ensure it satisfies NRS 178.4849's requirements or, using its inherent authority, employ hearing masters to conduct detention hearings as well.[20] Simply put, NRS 178.4849

[20] Many defendants in the Henderson Municipal Court violate city ordinances where there is no alleged victim. For example, Respondent Armendarez was arrested and detained for prohibited camping and possession of a controlled substance which may not be introduced into interstate commerce. AA 100. The City has never explained, assuming the Municipal Court cannot adequately prepare for a 48-hour detention hearing, why Mr. Armendarez was not administratively released by the jail. There were clearly no Marsy's Law concerns related to Mr. Armendarez. Nevertheless, to address actual Marsy Law concerns, the Henderson Municipal Court, pursuant to its inherent authority, has chosen to live-stream its detention hearings and provide notice on its website to alleged victims advising them to contact the Henderson Victim Advocate Unit with concerns regarding a defendant's detention hearing. See,<https://www.cityofhenderson.com/government/departments/municipal-court/pretrial-custody-hearings>, accessed October 9, 2025.

does not abrogate or interfere with a justice or municipal court's authority to administer its affairs.

E. There is no separation of powers problem between NRS 178.4849 and ADKT 0539.

This Court issued an order on March 21, 2019, requiring all Nevada courts to utilize standardized pretrial risk assessments ("NPRAs") to "assist judges in assessing whether the defendant is likely to show up for court and whether the defendant will be a danger to the community if released[,]" to "promote uniformity in how pretrial release decisions are made across the state[,]" and to "ensure that pretrial release decisions are based upon the risk posed by the defendant and not by whether the defendant can afford to pay bail[.]" See In re: The Committee to Study Evidence-Based Pretrial Release, ADKT 0539, Order Adopting Statewide Use of the Nevada Pretrial Risk Assessment, (filed March 21, 2019). This Court had the power to create the NPRA and mandate its use in Nevada courts.

The mandate to use NPRAs is not inconsistent with NRS 178.4849. Complying with both is simple: complete a risk assessment before the 48-hour hearing. Nothing in NRS 178.4849 impairs a courts ability to prepare or use NPRAs when making decisions regarding bail.

Even assuming NRS 178.4849 somehow "undermines" ADKT 0539 – because a small percentage of NPRAs cannot be completed within 48 hours – there is still no separation of powers conflict. Again, nothing in NRS 178.4849 prohibits the use of NPRAs. Moreover, NRS 178.4849 provides a remedy for situations where the NPRA is not complete in time – a continuance for good cause. The judicial officer has express and inherent authority to determine whether good cause exists. Finally, as previously noted, any failure to complete the required NPRAs could be remedied by the various courts' inherent authority to hire staff.

CONCLUSION

Based upon the foregoing, the Clark County Public Defender, the Clark County Special Public Defender, the Washoe County Public Defender, and the Washoe County Alternate Public Defender assert the Clark County District Court was correct to grant Respondents' mandamus petition directing the Henderson Municipal Court to conduct detention hearings in accordance with NRS 178.4849. The Statute does not violate the separation of powers doctrine. Accordingly, *amici* respectfully request that this Court affirm the

District Court's decision, in the mandamus proceeding below, that NRS 178.4849 does not violate the Nevada Constitution.

DATED this 28th day of October, 2025.

NANCY M. LEMCKE
CLARK COUNTY PUBLIC DEFENDER

By: */s/ William M. Waters*
WILLIAM M. WATERS, #9456
Chief Deputy Public Defender
309 So. Third Street, Suite #226
Las Vegas, Nevada 89155-2610
(702) 455-4685

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of NRAP 21(d), NRAP 32(a)(4) and NRAP 32(c)(2), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

1. This Amicus Curae brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point times new roman.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the partes of the brief exempted by NRAP 32(a)(7)(C), it is proportionally spaced, has a typeface of 14 points or more and contains 5,649 words which does not exceed type/volume limitations set forth in NRAP 21(d) and NRAP 32(a)(7).

3. Finally, I hereby certify that I have read this Amicus Curae brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief 13 regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript of appendix where the matter relied on is to be found.

I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of Nevada Rules of Appellate Procedure.

DATED this 28th day of October, 2025.

NANCY M. LEMCKE
CLARK COUNTY PUBLIC DEFENDER

By: */s/ William M. Waters*
WILLIAM M. WATERS, #9456
Chief Deputy Public Defender
309 So. Third Street, Suite #226
Las Vegas, Nevada 89155-2610
(702) 455-4685

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 28th day of October, 2025. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON D. FORD
SHANON CLOWERS
NICHOLAS VASKOV
MARC SCHIFALACQUA
SAMUEL G. BATEMAN
JEFFRY DOROCAK
ANDREW MOORE
R. SHIELDS
MARK JACKSON
MELISSA BROWN
ANNE LANGER
KENNETH TEDFORD
BRIAN KUNZI
CARLENE HELBERT
DEEP GOSWAMI
GARRIT PRUYT
STEPHEN RYE
WILLIAM SCHAEFFER
TYLER INGRAM
MATTHEW JOHNSON
KEVIN PASQUALE
WILLIAM M. WATERS
LANCE A. MANINGO
YASMIN KHAYYAMI
LAURIA LYNCH-GERMAN
VIRGINIA EICHACKER
KATHERYN HICKMAN
EVELYN GROSENICK

By: */s/ Gerardo Callotta-Zazueta*
Clark County Public Defender Employee