

## **Public Comment for Workshop scheduled December 2, 2020**

### **EMAIL FROM JOHN ARRASCADA – WASHOE COUNTY PUBLIC DEFENDER**

Kate Thomas shared with me the BDR draft regulations for DIDS. I appreciate how the regulations are establishing best practices for attorneys providing indigent defense. In that regard, I suggest the following change to Section 24 (2) regarding initial bail hearings. My suggestions create best practices requirements in light of Valdez Jimenez. In my opinion Valdez created a monumental shift in determining custody status and shifted burdens to the State along with a presumption for release. We are constantly fighting this battle at initials to get courts and prosecutors to comply with Valdez and change the way they approach custody status that has been ingrained within them. My proposed edit to Section 24(2) is:

**... and be prepared to conduct and adversarial hearing regarding release of the defendant. Counsel shall obtain the defendant's biographical information including but not limited to residence, employment and ties to the community to support the presumption of release on client's own recognizance. Counsel shall make reasonable efforts to verify the defendant's residence, employment, ties to the community, and any other information relevant to release, and present witness testimony or other verification whenever possible. The State holds the burden to prove by clear and convincing evidence that conditions of release it seeks are the least restrictive necessary to reasonably ensure the defendant's return to court and the safety of the community. Counsel should be further prepared to refute the State's arguments for detention and advocate for the least restrictive conditions for release. If a court determines by clear and convincing evidence that cash bail is necessary, counsel is required to advocate for a cash bail within the financial means of client to avoid a cash bail the creates de-facto detention.**

### **EMAIL FROM MARC PICKER – WASHOE COUNTY ALTERNATE PUBLIC DEFENDER**

Kate Thomas asked that I look at the proposed BDR for DIDS and offer any comments I might have. After reviewing it, this is what I have:

First, I wholeheartedly agree with John Arrascada's suggested addition.

As well, in looking at Sec. 22 of the BDR, it would appear that Washoe County would redo the current approved ADKT 411 Model Plan to fit the requirements of whatever form is approved by the DIDS Board. It would seem this could be a onerous task and the new plan might not include all of the sections we've included in the current model

plan. I have some concerns about that section without knowing what model plan the DIDS has in mind.

As well, the BDR appears to anticipate a written contract with specifically required terms for each attorney who accepts indigent defense appointments. At present, none of the attorneys in the Appointed Counsel Group have signed such a contract. Do we anticipate that DIDS will be providing guidelines on what is required to be in any such contract?

It also appears that sections 33 through 41 are not limited by the “” population less than 100,000” language which, I believe, was not the intent of the original bill. This could be remedied by simply placing that language before each of these sections.

In sec. 39, which I believe would create some issues as to whether Washoe County would be required to provide CLE training to the members of the Appointed Counsel Group – although John and I have talked about how to do this through our offices already.