

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN THE JUSTICE COURT OF RENO TOWNSHIP
IN AND FOR THE COUNTY OF WASHOE, STATE OF NEVADA

IN THE ADMINISTRATIVE MATTER OF:

PRETRIAL RELEASE DETERMINATIONS
AND PROCEDURES FOR ALL ARRESTS
IN THE RENO JUSTICE COURT.

_____ /

SECOND AMENDED ADMINISTRATIVE ORDER 2022-06
(PRETRIAL RELEASE DETERMINATIONS AND PROCEDURES FOR ALL ARRESTS
AND COMPLAINTS FILED IN THE RENO JUSTICE COURT)

This Order governs all pretrial release decisions and procedures for all arrests and complaints filed in the Reno Justice Court (RJC) by probable cause declaration or warrant of arrest. This Order directs the Washoe County Department of Alternative Sentencing (DAS) to supervise and monitor all individuals released pretrial by RJC with supervision conditions until bind-over to the Second Judicial District Court (SJDC) pursuant to NRS 211A.090; it provides for the administrative release of certain RJC arrestees to be facilitated by employees of RJC, DAS or SJDC Pretrial Services; it sets forth the pretrial procedures to be followed in RJC to respect the rights of arrestees pursuant to the United States and Nevada Constitutions and the rights of victims of crime pursuant to Sec. 8A of the Nevada Constitution; it sets forth the procedures to be followed for *Valdez-Jimenez, Cnty. of Riverside*, and NRS 178.4849 hearings; and it sets forth the procedures to be followed for violations of conditions of release pursuant to NRS 178.484 and NRS 178.487.

WHEREAS, “In our society liberty is the norm, and detention prior to trial ... is the carefully limited exception.” *United States v. Salerno*, 481 U.S. 739, 755, 107 S. Ct. 2095, 95 L. Ed. 2d 697 (1987);

WHEREAS, the Nevada Supreme Court has held arrestees are entitled to a prompt release from custody after arrest unless the court finds bail is necessary to ensure the safety of

1 the community or appearance of the arrestee. *Valdez-Jimenez v. Eighth Jud. Dist. Ct. in & for*
2 *Cty. of Clark*, 136 Nev. 155, 167, 460 P.3d 976, 987–88 (2020) (arrestees must be released
3 “without bail if other non-monetary conditions are sufficient” to “reasonably ensure the
4 defendant's appearance at court proceedings or to protect the community, including the victim
5 and the victim's family”);

6 WHEREAS, NRS 171.178 requires defendants be brought before the court "without
7 unnecessary delay," after their arrest for an initial appearance;

8 WHEREAS, NRS 171.178 requires defendants be released on bail "with the least
9 possible delay," after their arrest unless prohibited by NRS 178.487 and 178.484;

10 WHEREAS, NRS 178.4849 requires courts “within 48 hours after a person has been
11 taken into custody, hold a pretrial release hearing”;

12 WHEREAS, most of the procedures mandated in *Valdez-Jimenez* are from the federal
13 procedures on pretrial detention. "We find several protections identified by *Salerno* in the federal
14 Bail Reform Act to be of particular importance in safeguarding against erroneous de facto
15 detention orders." *Id.* 136 Nev. At 165, 460 P.3d at 987 (2020);

16 WHEREAS, 18 U.S. Code § 3142(f) requires the detention hearing "be held immediately
17 upon the person's first appearance before the judicial officer unless that person, or the attorney
18 for the Government, seeks a continuance”;

19 WHEREAS, the State “must provide a fair and reliable determination of probable cause
20 as a condition for any significant pretrial restraint of liberty, and this determination must be made
21 by a judicial officer either before or promptly after arrest.” *Gerstein v. Pugh*, 420 U.S. 103, 125,
22 95 S. Ct. 854, 868–69, 43 L. Ed. 2d 54 (1975);

23 WHEREAS, while “the Fourth Amendment permits a reasonable postponement of a
24 probable cause determination while the police cope with the everyday problems of processing
25
26

1 suspects through an overly burdened criminal justice system” the hearing must occur without
2 unnecessary delay and no longer than 48 hours. *Cnty. of Riverside v. McLaughlin*, 500 U.S. 44,
3 55, 111 S. Ct. 1661, 1669, 114 L. Ed. 2d 49 (1991);

4 WHEREAS, “every effort must be made to expedite the combined proceedings” of
5 probable cause determinations and bail hearings. *Gerstein*, 420 U.S., at 124, 95 S.Ct., at 868;

6
7 WHEREAS, the ABA Pretrial Standards call for arrestees to be provided a detention
8 hearing in front of a magistrate within six hours of arrest. ABA Pretrial Standard 10-4.1. *Prompt*
9 *First Appearance*;

10 WHEREAS, RJC has been setting bail and conditions for felony arrests based upon the
11 probable cause declaration and NPRA twice a day or at the initial appearance of the arrestee as
12 required by NRS 171.178 for many years;

13 WHEREAS, pursuant to the Nevada Supreme Court's ADKT 539, the Nevada Pretrial
14 Risk Assessment (NPRA) “shall be adopted for use in all judicial districts in Nevada” because
15 the NPRA “will promote uniformity in how pretrial release decisions are made across the state,
16 and it will ensure that pretrial release decisions are based on the risk posed by the defendant and
17 not by whether the defendant can afford to pay bail”;

18
19 WHEREAS, the SJDC Pretrial Services unit (SJDC PTS) began administering the NPRA
20 on arrestees for all courts in Washoe County before ADKT 539;

21 WHEREAS, pursuant to NRS 178.4847, “A court of competent jurisdiction may adopt
22 an administrative order relating to the circumstances under which a person may be released from
23 custody without a pretrial release hearing, including, without limitation, those circumstances
24 under which a sheriff or chief of police may release, without bail, a person charged with a
25 misdemeanor.” 2021 Nevada Laws Ch. 375 (A.B. 424) (effective July 1, 2022);
26

1 WHEREAS, pursuant to the ABA Pretrial Standards courts should “grant other justice
2 agencies delegated release authority to screen and release arrestees before or after a formal
3 booking" to “significantly reduce costs associated with unnecessary detention of individuals
4 charged with minor offenses or who are deemed low risk”;

5 WHEREAS, “Both NIC (National Institute of Corrections) and NAPSA (National
6 Association of Pretrial Services Agencies) consider delegated release authority an essential
7 element of an effective pretrial system.” *APPR Guide to Pretrial Decision Framework*;

8 WHEREAS, pursuant to the ABA Pretrial Standards “Any policies regarding delegated
9 release should be in writing through a memorandum of understanding, local administrative
10 order, or other authorizing document”;

11 WHEREAS, detaining low and moderate risk arrestees increases the risk they pose to the
12 community to commit crimes when they are released. *The Hidden Costs of Pretrial Detention*,
13 Lowenkamp, Vannostrand, Holsinger (“Detaining low and moderate risk defendants, even just
14 for a few days, is strongly correlated with higher rates of new criminal activity both during the
15 pretrial period and years after case disposition”);

16 WHEREAS, “Data shows that pretrial detention can result in numerous negative
17 consequences such as a higher likelihood of being convicted, losing one’s job, housing, and
18 parental rights, harsher sentences, higher likelihood of pleading guilty, and increased recidivism.
19 Further, the financial burden and strain of securing bail often falls disproportionately on women
20 and other family members.” *The Civil Rights Implications of Cash Bail*, U.S. Commission on
21 Civil Rights, January 2022;

22 WHEREAS, pretrial release conditions may constitute a significant restraint of liberty
23 and must therefore be narrowly tailored to a compelling governmental interest. *See, Gerstein*,
24
25
26

1 420 U.S. at 114 (“Even pretrial release may be accompanied by burdensome conditions that
2 effect a significant restraint of liberty”);

3 WHEREAS, the ABA Pretrial Standards “regard frequently-imposed conditions of
4 pretrial supervision such as drug testing, regular reporting to a supervising authority, or
5 electronic surveillance as significant restraints”;

6
7 WHEREAS, “Release conditions that include alternatives to detention—with the
8 exception of mental health treatment, when appropriate—generally decrease the likelihood of
9 success for lower risk-defendants and should be required sparingly.” *Pretrial Risk Assessment*,
10 Marie VanNostrand, Ph.D. Gena Keebler, Luminosity, Inc., Federal Probation Volume 73
11 Number 2;

12 WHEREAS, pursuant to NRS 178.4851 “the court shall only impose bail or a condition
13 of release, or both, on a person as it deems to be the least restrictive means necessary to protect
14 the safety of the community or to ensure that the person will appear at all times and places
15 ordered by the court”;

16
17 WHEREAS, studies indicate, “moderate and high-risk defendants who received pretrial
18 supervision were more likely to appear in court.” *Exploring the Impact of Supervision on*
19 *Pretrial Outcomes*, Christopher T. Lowenkamp, Ph.D. Marie VanNostrand, Ph.D;

20 WHEREAS, ”Bail bond agents charge a nonrefundable ‘premium’ – a fee that is usually
21 about 10% of the total money bail amount. As a general rule, bail bond agents do not refund
22 premiums in whole or in part for any reason, even if the charges are quickly dismissed.” *The*
23 *Devil in the Details: Bail Bond Contracts in California*, UCLA School of Law, May 2017;

24
25 WHEREAS, pursuant to NRS 178.502, in setting bail a court “may require one or more
26 sureties or *may authorize the acceptance of cash* or bonds or notes of the United States *in an*
amount equal to or less than the face amount of the bond.” (emphasis added);

1 WHEREAS, when arrestees post a cash portion with the court pursuant to NRS 178.502,
2 the funds are refunded if the charges are later dismissed. *But see, The High Cost of Bail*, Arpit
3 Gupta, Ph.D., Douglas Swanson, 2016. (In Maryland over a five-year period, “more than \$75
4 million in bail bond premiums were charged in cases that were resolved without any finding of
5 wrongdoing”);

6 WHEREAS, pursuant to the ABA Pretrial Standards, when money bail is required, courts
7 should accept “ten percent of the face amount of the bond”. *Standard 10-5.3. Release on*
8 *Financial Conditions*;

9 WHEREAS, “Whether released defendants are higher or lower risk or in-between,
10 unsecured bonds offer the same public safety benefit as do secured bonds.” *UNSECURED*
11 *BONDS: THE AS EFFECTIVE AND MOST EFFICIENT PRETRIAL RELEASE OPTION*,
12 Pretrial Justice Institute;

13 WHEREAS, “Whether released defendants are higher or lower risk or in-between,
14 unsecured bonds offer decisionmakers the same likelihood of court appearance as do secured
15 bonds.” *UNSECURED BONDS: THE AS EFFECTIVE AND MOST EFFICIENT PRETRIAL*
16 *RELEASE OPTION*, Pretrial Justice Institute;

17 WHEREAS, “pretrial services programs cannot only promote defendant accountability,
18 but also cost savings.” *Law Enforcements Role in Pretrial Release*, The International
19 Association of Chiefs of Police;

20 WHEREAS, supervise release programs save communities scarce financial resources.
21 Austin, James, et. al. *The Effectiveness of Supervised Pretrial Release*, Crime and Delinquency,
22 Vol. 31, No. 4, October 1985, pp. 519-537;

23 WHEREAS, pursuant to NRS 211A.090, DAS is vested with the power to supervise “a
24 person who has been charged with or convicted of a misdemeanor, gross misdemeanor or felony
25
26

1 and who has been released from custody before trial or sentencing, subject to the conditions
2 imposed by the court”;

3 WHEREAS, pursuant to NRS 211A.075, the term “‘Supervised releasee’ means a person
4 ... who has been released from custody before trial or sentencing, subject to the conditions
5 imposed by the court.”

6 WHEREAS, the term “check-in” as used in this order refers to a requirement that
7 arrestees meet with a DAS officer at a time or frequency originally set by the court that may be
8 lowered by DAS or the Court;

9 WHEREAS, the term “supervise” as used in this order and NRS 211A.090 refers to DAS
10 monitoring the arrestee’s compliance with court ordered conditions including: drug testing,
11 residential confinement, obeying all laws, not contacting victims, making court appearances, and
12 obeying any other court imposed condition;

13 WHEREAS, pursuant to NRS 211A.110, DAS shall “[a]dvice the court of any ...
14 supervised releasee who has violated the terms or conditions of his or her ... residential
15 confinement or pretrial or presentence release”;

16 WHEREAS, pursuant to NRS 211A.125(1), the DAS “chief or an assistant may arrest ...
17 a supervised releasee without a warrant if there is probable cause to believe that ... the supervised
18 releasee has committed an act that constitutes a violation of a condition of his or her ... residential
19 confinement or pretrial or presentence release”;

20 WHEREAS, pursuant to NRS 211A.125(2), “Any other peace officer may arrest ... a
21 supervised releasee upon receipt of a written order by a [DAS] chief or an assistant stating that
22 there is probable cause to believe that ... the supervised releasee has committed an act that
23 constitutes a violation of a condition of his or her ... residential confinement or pretrial or
24 presentence release”;

1 WHEREAS, the term “named victim” in this Order shall include all victims named in the
2 probable cause declaration or criminal complaint;

3 WHEREAS, as used in this Order, “subsequent offense” means an arrest for a crime with
4 an offense date after the offense date of the current release;

5 WHEREAS, pursuant to NRS 178.484(2), “A person arrested for a felony who has been
6 released on probation or parole for a different offense must not be admitted to bail unless”
7 specifically ordered by the court;

8 WHEREAS, pursuant to NRS 178.484(3), “A person arrested for a felony whose
9 sentence has been suspended pursuant to NRS 4.373 or 5.055 for a different offense or who has
10 been sentenced to a term of residential confinement pursuant to NRS 4.3762 or 5.076 for a
11 different offense must not be admitted to bail unless” specifically ordered by the court;

12 WHEREAS, the “high-risk impaired driver [HRID] population accounts for a
13 disproportionate number of fatalities.” *High Risk Impaired Drivers: Combatting a Critical*
14 *Threat*. Governors Highway Safety Association (GHSA) 2021;

15 WHEREAS, traditional screening tools such as the NPRA are not effective for DUI
16 offenders. (“Screening and assessment are critical because DUI offenders are a distinct
17 population within the criminal justice system. Prior DUIs and other traffic infractions may be
18 common among HRIDs, but they often lack a history of other offenses. This coupled with the
19 presence of other pro-social and protective factors, such as higher levels of education and
20 employment and strong community ties, often leads to these offenders being classified as low
21 risk, despite having a heightened risk of causing death or serious injury.”) *High Risk Impaired*
22 *Drivers: Combatting a Critical Threat*. Governors Highway Safety Association (GHSA) 2021;
23
24
25
26

1 WHEREAS, “Determining the offender’s risk level is critical. There are numerous
2 assessment instruments ... validated for use with DUI offenders” including the DUI-RANT.
3 *High Risk Impaired Drivers: Combatting a Critical Threat.* Governors Highway Safety
4 Association (GHSA) 2021;

5 WHEREAS, pursuant to the ABA Pretrial Standards, “Where a crime of violence is
6 implicated, an assessment of the risk posed by the defendant to the victim(s) and community
7 should be completed prior to the first appearance.” *ABA Pretrial Standard 10-4.1*;

8 WHEREAS, many jurisdictions use a pretrial screening tool that provides a violence
9 predictor. However, the NPRA does not, so there is no effective means at this time to assess risk
10 of violence until a *Valdez-Jimenez* hearing;

11 WHEREAS, NRS 178.4851 requires a court setting conditions of release to “make
12 findings of fact for such a determination and state its reasoning on the record, and, if the
13 determination includes the imposition of a condition of release, the findings of fact must include
14 why the condition of release constitutes the least restrictive means necessary to protect the safety
15 of the community or to ensure the person will appear at the times and places ordered by the
16 court”;

17 WHEREAS, RJC has been releasing low risk arrestees through an informal agreement
18 with SJDC PTS for many decades with great success;

19 WHEREAS, justice courts have “limited inherent authority to act in a particular manner
20 to carry out [their] authority granted by statute.” *State v. Sargent*, 122 Nev. 210, 214, 128 P.3d
21 1052, 1054–55 (2006). *See also, City of Sparks v. Sparks Mun. Ct.*, 129 Nev. 348, 363, 302 P.3d
22 1118, 1128 (2013) (“the courts, whose judicial functions involve hearing and resolving legal
23 controversies, possess the authority to take any actions that are inherent or incidental to that
24
25
26

1 function.”) Further, limited jurisdiction courts “possess inherent judicial powers to the same
2 extent as the other courts of this state.”) *Id.*;

3 WHEREAS, pursuant to the current procedures at the WCDF, law enforcement officers
4 making a probable cause arrest must submit a document titled *Arrest Report and Declaration of*
5 *Probable Cause* at the time of submitting the arrestee for booking at the WCDF. Pursuant to
6 WCDF policy, the biographical information, court of jurisdiction, and time and location of arrest
7 must be filled out before the WCDF takes custody of the arrestee;
8

9 WHEREAS, original jurisdiction generally refers to trial, entry of plea, sentencing and
10 other matters related thereto. *See, Koller v. State*, 122 Nev. 223, 130 P.3d 653 (2006);

11 WHEREAS, according to the latest statistics in the *Annual Report of the Nevada*
12 *Judiciary*, for FY 2021 there were 6,183 felony charges (3,638 felony cases) filed in the courts
13 of Washoe County. Of that total, 4,172 of the charges (2,446 cases) were filed in RJC. The
14 remainder were filed in the Sparks Justice Court, 1,960 charges (1,162 cases); Incline Justice
15 Court, 51 charges (30 cases); and Wadsworth Justice Court, zero charges (zero cases). For the
16 same fiscal year, there were 1,379 charges (992 cases) filed in the SJDC in Washoe County.
17 Therefore, of all felony charges (and cases) filed in Washoe County, 67% were filed in RJC.
18 Further, of all felony charges (and cases) filed in Washoe County, only 22% were ever filed in
19 the SJDC. Additionally, since the majority of felony cases are resolved in RJC, the average
20 length of time RJC arrestees are under the jurisdiction of RJC on pretrial release is much longer
21 than they are, on average, under SJDC jurisdiction.
22

23 **Accordingly, and good cause appearing therefor, this AO 2022-06 makes the following**
24 **findings, conclusions, and order.**

- 25 I. THE JUDGES OF RJC HAVE THE JUDICIAL POWER TO SET THE
26 CONDITIONS OF RELEASE FOR ALL ARRESTEES BOOKED INTO THE
WCDF BASED UPON A CRIMINAL COMPLAINT FILED IN RJC OR
BASED UPON A DECLARATION OF PROBABLE CAUSE NAMING RJC

1 AS THE JURISDICTION UNTIL THE MATTER IS PROPERLY
2 TRANSFERRED TO ANOTHER COURT PURSUANT TO A SPECIFIC
3 STATUTE.

4 The Chief Judge of the SJDC issued AO 2022-09 on July 7, 2022, in which the Chief
5 Judge ordered the release of certain arrestees under the jurisdiction of RJC and set conditions on
6 those releases. SJDC AO 2022-09(1)(A). Further, in SJDC AO 2022-09 section (1)(B), the
7 Chief Judge limited the power of the judges of RJC to change portions of the release conditions.
8 Additionally, the SJDC Chief Judge set forth a mechanism whereby the RJC Chief Judge must
9 petition the SJDC Chief Judge in order to release RJC arrestees administratively. SJDC AO
10 2022-09(1)(E). Finally, in section II of SJDC AO 2022-09, the SJDC Chief Judge set up a
11 governing body to decide the release of RJC arrestees. Each of these orders exceeds the
12 jurisdiction or judicial power of the SJDC Chief Judge and are, therefore, unenforceable upon
13 RJC and RJC arrestees.¹

14 A. The Chief Judge of the SJDC Does Not have Administrative Power Governing
15 the Operations of the RJC or the Decisions of RJC Judges.

16 The SJDC Chief Judge has administrative power over certain matters in the SJDC, but
17 no power to control the release decisions of the RJC judges. Pursuant to NRS 3.025, the chief
18 judge of the SJDC “shall: (a) Assign cases to each judge in the judicial district; (b) Prescribe the
19 hours of court; (c) Adopt such other rules or regulations as are necessary for the orderly conduct
20 of court business; and (d) Perform all other duties of the Chief Judge or of a presiding judge that
21 are set forth in this chapter and any other provision of NRS.” The Chief Judge of the SJDC has
22 more specific powers to manage the business of the SJDC pursuant to WDCR Rule 2. However,
23 no provision of either of these rules or any other authority cited by the SJDC in AO 2022-09
24 _____

25
26 ¹ “Judicial Power ‘is the capability or potential capacity to exercise a judicial function. That is, ‘Judicial Power ‘is the authority to hear and determine justiciable controversies. Judicial power includes the authority to enforce any valid judgment, decree, or order. A mere naked power is useless and meaningless. The power must be exercised, and it must function to be meaningful.” Galloway v. Truesdell, 83 Nev. 13, 20, 422 P.2d 237, 242 (1967).

1 gives the SJDC the power to control the pretrial release decisions of the judges of RJC. Even if,
2 *arguendo*, such a rule existed, it would be unenforceable as the Nevada Supreme Court has
3 recognized, “it is critical that judges have total and absolute independence in resolving cases and
4 at all stages in making judicial decisions,” and chief judges cannot control these decisions even
5 in their own court. *Halverson v. Hardcastle*, 123 Nev. 245, 268, 163 P.3d 428, 444 (2007).
6 Therefore, the provisions of SJDC AO 2022-09 that purport to control the administration or
7 judicial decisions of the RJC judges are unenforceable and have no control over RJC arrestees.
8

9 **B. The Chief Judge of the SJDC Does Not have Judicial Power Over Misdemeanor**
10 **Arrestees at the WCDF.**

11 SJDC AO 2022-09 releases many misdemeanor arrestees despite the SJDC lacking
12 jurisdiction over misdemeanor arrestees. Article 6, section 6 of the Nevada Constitution
13 provides, in part: “The District Courts ... shall have original jurisdiction in all cases excluded by
14 law from the original jurisdiction of the justices' courts.” Pursuant to NRS 4.370, “Justice courts
15 have jurisdiction of all misdemeanors.” *See also, Entrikin v. State*, 125 Nev. 1034, 281 P.3d
16 1170 (2009) (“Original jurisdiction over misdemeanors generally lies with the justice's court”).
17 Even when a misdemeanor arises out of the same facts and circumstances as a felony and is
18 charged in the same information, the district court has no jurisdiction over the misdemeanor
19 charge unless it is “A battery which constitutes domestic violence that is punishable as a
20 misdemeanor pursuant to NRS 200.485 ... [that] is based on the same act or transaction as the
21 felony or gross misdemeanor.” NRS 173.115 (amended by AB 42 of the 81st Session of Nevada
22 Legislature). *See also, State v. Kopp*, 118 Nev. 199, 204, 43 P.3d 340, 343 (2002) (“it is not
23 reasonable to interpret NRS 173.115 as granting jurisdiction to the district court over a
24 misdemeanor that is joined with a felony or gross misdemeanor in a single indictment or
25 information.”) (Decided before AB 42 became effective January 1, 2022).
26

1 There are specific statutes that provide limited jurisdiction to the district court over
2 misdemeanors including those related to specialty courts, appeals and NRS 173.115, *supra*.
3 District courts may also obtain aspects of original jurisdiction over misdemeanors as a result of
4 a lesser included verdict after trial on a felony or gross misdemeanor. *Entrikin v. State*, 125 Nev.
5 1034, 281 P.3d 1170 (2009). There is, however, no statute that allows the district court to control
6 the release decisions of RJC judges on misdemeanor cases.
7

8 It is not possible for the district court and justice court to have jurisdiction over the release
9 of misdemeanor charges at the same time. The Nevada Supreme Court has previously held the
10 district courts cannot exercise concurrent jurisdiction on misdemeanors with the justice courts.
11 *See, State v. Kopp*, 118 Nev. 199, 202, 43 P.3d 340, 342 (2002)““ the district courts have no
12 original jurisdiction in matters in which the justices' courts have original jurisdiction. In short,
13 concurrent jurisdiction between the district courts and the justices' courts can no longer exist.”)
14 *See also, K.J.B. Inc. v. Second Jud. Dist. Ct. of State of Nev., In & For Washoe Cnty.*, 103 Nev.
15 473, 475, 745 P.2d 700, 701 (1987) (“concurrent jurisdiction between the district courts and the
16 justices' courts can no longer exist”).
17

18 NRS 178.4847 allows “a court of competent jurisdiction” to adopt an administrative
19 release order for misdemeanor offenses. The SJDC clearly is not “a competent court of
20 jurisdiction over misdemeanor cases.” *Id.* Despite the clear lack of jurisdiction or judicial power
21 over misdemeanors, the SJDC includes several sections governing the release of and conditions
22 on misdemeanors in SJDC AO 2022-09. Section (1)(B) of SJDC AO 2022-09 sets release
23 conditions over a wide array of misdemeanor cases including misdemeanors arrestees, “for a
24 crime involving driving under the influence,” “a domestic violence offense,” and all
25 misdemeanor arrestees “with an assessed heightened risk of failure to appear,” “all cases
26 involving a named victim,” and “all persons arrested for a crime ... who have a history of

1 substance abuse by NPRA assessment.” Further, the SJDC AO 2022-09 release Praxis releases
2 many arrestees with misdemeanor cases including misdemeanor crimes of “violence (assault,
3 battery), destruction of property (graffiti), DUI 1st, possession of firearm under the influence of
4 drugs/alcohol, revoked driver’s license, drawing a deadly weapon in a threatening manner, other
5 misdemeanor firearm offenses,” and misdemeanors involving “children, elderly and vulnerable
6 person crimes, stalking, harassment, DUI 2nd” that score low or medium risk on the NPRA, and
7 “all misdemeanors not included in Serious or Most Serious categories.”² These provisions of
8 the SJDC AO 2022-09 are unenforceable as the SJDC has no jurisdiction or judicial power over
9 these misdemeanor cases.
10

11 C. The Nevada Supreme Court has Expressly Recognized Justice Courts have
12 Jurisdiction Over Several Aspects of Felony Cases.

13 The original jurisdiction (trial, plea, sentencing, etc.) of felony and gross misdemeanor
14 cases lies in the district court unless the district court has delegated some of that authority to a
15 justice of the peace. *See, State v. Frederick*, 129 Nev. 251, 254, 299 P.3d 372, 375 (2013)
16 (“justices of the peace may take felony pleas while serving as district court masters”).

17 Pursuant to NRS 4.370, “Justice courts have jurisdiction of all misdemeanors and no other
18 criminal offenses *except as otherwise provided by specific statute.*” (emphasis added). Then,
19

21
22 ² SJDC AO 2022-09 contains other unenforceable directives including section (1) (B)(5) which requires “all persons
23 arrested for a crime involving driving under the influence *shall abstain from substance and/or alcohol and/or*
24 *alcohol* [sic], as appropriate to the offense and history of the arrestee.” This condition is too vague to be legally
25 enforceable. Further, section (1)(B) prohibits “defendants from engaging in specific conduct that may be harmful
26 to defendant’s own health, safety or welfare” which is also vague and not a legal justification for release conditions.
See NRS 178.4851 “the court shall only impose bail or a condition of release, or both, on a person as it deems to be
the least restrictive means necessary *to protect the safety of the community or to ensure that the person will appear*
at all times and places ordered by the court.”(emphasis added); *See also, United States v. Scott*, 450 F.3d 863, 872
(9th Cir. 2006)(overturning pretrial drug test violation holding “The government in this case has relied on nothing
more than a generalized need to protect the community and a blanket assertion that drug-testing is needed to ensure
Scott's appearance at trial. Both are insufficient”).

1 generally, the district court is the trial court for felonies and gross misdemeanors, and the justice
2 court is the trial court for misdemeanors. That said, there are many areas where the Nevada
3 Legislature has provided the justice court’s jurisdiction over felonies and gross misdemeanors
4 by specific statutes.

5 The Nevada Supreme Court has repeatedly recognized the jurisdiction of justice courts
6 over various aspects of felony and gross misdemeanor cases. In *Koller v. State*, 122 Nev. 223,
7 229, 130 P.3d 653 (2006), the court held the justice court has jurisdiction to hear a motion to
8 dismiss a felony complaint for violations of NRS 171.070. In *Koller*, the Supreme Court also
9 reviewed several cases where they had “previously addressed justice court jurisdiction over
10 various aspects of felony cases” stating:
11

12 Although we generally interpret justice court jurisdiction over most aspects of
13 felony cases as limited, our limitation has historically been based on the fact that
14 the challenges involved various evidentiary issues better reserved for the trial court.
15 We have also interpreted jurisdiction as limited where there is an express statutory
committal of jurisdiction to the trial court.” *Id.*

16 Here, the question is whether RJC has jurisdiction to conduct the *County of Riverside* (finding
17 of probable cause for arrest) and *Valdez-Jimenez*/NRS 178.4849 (prompt setting of bail) hearings
18 on RJC felony arrestees and administratively release some of these cases pursuant to NRS
19 178.4847. Since these are not “evidentiary issues better reserved for the trial court” and specific
20 statutes authorize the justice courts to conduct these hearings, RJC has the jurisdiction to set bail
21 and conditions on RJC felony arrestees and administratively release some of these cases pursuant
22 to NRS 178.4847.

23 The *Koller* court noted several additional areas the Nevada Supreme Court had
24 recognized the jurisdiction of the justice courts over felonies, including *State of Nevada v.*
25 *District Court*, 114 Nev. 739, 964 P.2d 48 (1998) (motion to dismiss a felony complaint in justice
26 court for violations of NRS 178.562(2)); *State v. Fain*, 105 Nev. 567, 779 P.2d 965 (1989)

1 (motion to dismiss the felony complaint in the justice court arguing that his constitutional right
2 to a speedy trial had been denied)(overruled on other grounds); *State v. Autry*, 103 Nev. 552, 746
3 P.2d 637 (1987)(motion to dismiss a felony complaint in the justice court due to prejudice to fair
4 trial rights because of the State's delay in bringing charges).” After *Koller*, the Nevada Supreme
5 Court also recognized the justice courts have jurisdiction to suppress evidence in felony cases.
6 *See, Grace v. Eighth Jud. Dist. Ct.*, 132 Nev. 511, 514, 375 P.3d 1017, 1018 (2016) (“We now
7 conclude that justice courts have express and limited inherent authority to suppress illegally
8 obtained evidence during preliminary hearings.”) The assertion in SJDC AO 2022-09 that justice
9 courts have no jurisdiction over felony cases is, therefore, not accurate.
10

11 D. The Justice Courts and Not the District Courts are Authorized by the Nevada
12 Revised Statutes to Set Bail and Conditions on Felony Arrestees Arrested
13 Before an Information or Indictment.

14 NRS Chapter 171 provides the justice court’s jurisdiction over several aspects of felonies.
15 NRS 171.178-171.208, collectively referred to as “Proceedings Before Magistrate,” provide
16 jurisdiction for the justice courts to conduct first appearances of arrestees on felonies, appoint
17 counsel, set bail and conduct preliminary examinations. While the sections refer to “magistrate,”
18 the magistrate in NRS 171.178-171.208 has been interpreted to be the justice of the peace.
19 Additionally, interpreting the term “magistrate” in these sections of Chapter 171 to be district
20 court judges would lead to absurd results.

21 Pursuant to NRS 171.178(1), “a peace officer making an arrest under a warrant issued
22 upon a *complaint* or without a warrant shall take the arrested person without unnecessary delay
23 before the magistrate who issued the warrant or the nearest available magistrate ...” (emphasis
24 added). Section (4) of the same statute then states, “When a person arrested without a warrant
25 is brought before a magistrate, a *complaint* must be filed forthwith.” (emphasis added). Criminal
26 complaints are not criminal filings in the district court, only indictments and informations are.

1 See NRS 173.015 (“The first pleading on the part of the State is the indictment or information”).
2 Criminal complaints are the first formal pleading of felony charges from the State in the justice
3 courts. Therefore, district court judges are not the magistrates referred to in NRS 171.178 on
4 felony arrests; the justice court judges are. Accordingly, the magistrate in the initial appearance
5 statute, NRS 171.178, is the justice of the peace for felony arrests unless the arrestee is arrested
6 on an information or indictment. It is the justice court judges then that have the jurisdiction to
7 set the initial bail on felony arrests before indictment or information, not the district court.
8

9 After the initial appearance on felonies pursuant to NRS 171.178, NRS 171.186 requires
10 the magistrate “inform the defendant of the *complaint* and of any affidavit filed therewith, of the
11 right to retain counsel, of the right to request the assignment of counsel if the defendant is unable
12 to obtain counsel, and of the right to have a preliminary examination.” Again, the statute can
13 only be referring to justices of the peace on felony arrests because they are charged by complaint,
14 not indictment or information. NRS 171.186 continues, “The magistrate or master shall also
15 inform the defendant that the defendant is not required to make a statement and that any
16 statement made may be used against him or her. The magistrate shall allow the defendant
17 reasonable time and opportunity to consult counsel and *shall admit the defendant to bail as*
18 *provided in this title.*” (emphasis added). It is the justice court judges, therefore, that have the
19 jurisdiction to set the initial bail on felony arrests. The district court only has jurisdiction to set
20 bail on informations and indictments.
21

22 The other sections of NRS 171.178-171.208 further support the magistrate for initial
23 appearances on felonies not included in informations or indictments is the justice of the peace.
24 NRS 171.182 and 171.184 provide for the transfer of the case to the county and magistrate where
25 the complaint was filed. Only justice court judges have jurisdiction limited by county; district
26 court judges have statewide jurisdiction. NRS 171.196 then states that if the charges in the

1 criminal complaint are “not triable in the Justice Court, the defendant must not be called upon to
2 plead.” This provision clearly indicates the magistrate for felony cases in Chapter 171 are the
3 judges of the justice court. NRS 171.196 continues, “If the defendant waives preliminary
4 examination, the magistrate shall immediately hold the defendant to answer in the district court.”
5 Since the district court cannot act as the magistrate and “hold the defendant to answer in the
6 district court,” the magistrate in NRS 171.178-171.208 is the justice of the peace.

8 NRS 171.1965, 171.197, 171.1975, 171.198, 171.202 and 171.204 all use the term
9 “magistrate” when referring to the judge presiding over the preliminary examination. In Nevada,
10 it is well established that it is the justice of the peace that holds the preliminary examination and,
11 therefore, again, is the magistrate referred to in NRS 171.178-171.208 and, therefore, the judge
12 with jurisdiction over the setting of bail on arrestees not filed in an indictment or information.
13 *See Grace*, (“justice courts are statutorily empowered to conduct preliminary hearings for gross
14 misdemeanor and felony charges.”); *Parsons v. State*, 116 Nev. 928, 933, 10 P.3d 836, 839
15 (2000) (“the justice's court is required to conduct a preliminary examination”); *State v. Just. Ct.*
16 *of Las Vegas Twp., Clark Cnty.*, 112 Nev. 803, 806, 919 P.2d 401, 402 (1996) (“The justice
17 court's role at the preliminary hearing is to determine whether there is probable cause to find that
18 an offense has been committed and that the defendant has committed it. NRS 171.206. If the
19 justice court finds probable cause, the court must order the defendant bound over for trial in the
20 district court.”); *State v. Sargent*, 122 Nev. 210, 214, 128 P.3d 1052, 1055 (2006) (“NRS 171.196
21 authorizes the justice court to conduct a preliminary hearing”).
22
23

24 The sections of NRS Chapter 171 titled “Proceedings Before Magistrate” begin with the
25 initial appearance statute, NRS 171.178, and conclude with NRS 171.208. Pursuant to NRS
26 171.208, “If a preliminary examination has not been had and the defendant has not
unconditionally waived the examination, the district court may for good cause shown at any time

1 before a plea has been entered or an indictment found remand the defendant for preliminary
2 examination to the appropriate *justice of the peace ...*) (emphasis added).

3 It is clear the justices of the peace are the magistrates empowered by Chapter 171 to
4 conduct the initial appearance of arrestees on felonies. Since *Valdez-Jimenez* and NRS 178.4849
5 require bail be set at the initial appearance, it is the justices of the peace that sets the initial bail
6 and conditions on felonies based upon arrests by complaint with or without a warrant. It is
7 equally clear district court judges obtain original jurisdiction of felony charges upon the filing
8 of an indictment or the bind-over from justice court, and they then set bail upon initial appearance
9 or arraignment on the information or indictment. Additionally, there cannot be concurrent
10 jurisdiction between the justice and district courts. Therefore, the “court of competent
11 jurisdiction [that] may adopt an administrative order relating to the circumstances under which
12 a person may be released from custody without a pretrial release hearing” on felony arrestees
13 with felony charges not included in an indictment or information pursuant to NRS 178.4847
14 must be the justice court. No other interpretation is supported by the Nevada Constitution,
15 Nevada Revised Statutes, and the Nevada Supreme Court.

16 Any interpretation that the district court is the magistrate referred to in the sections of
17 NRS Chapter 171 titled “Proceedings Before Magistrate” would lead to absurd results. If the
18 magistrate in NRS 171.178-171.208 included the district court, then it must also include the other
19 judges in the NRS 169.095 definition including, “Justices of the Supreme Court, Justices of the
20 Court of Appeals... and Municipal Court judges.” It is unreasonable to interpret the initial
21 appearance statutes to include all courts in Nevada. Unimaginable forum shopping and general
22 chaos would result. Even if the sections in the “Proceedings Before Magistrate” section of NRS
23 171 somehow included only the district court, it would still lead to absurd results, just as the
24 Nevada Supreme Court recognized in *Kopp* when they decided district courts generally have no
25
26

1 original jurisdiction over misdemeanors. An interpretation that both district court and justice
2 court judges have jurisdiction over felonies before they are filed in an information or indictment
3 would lead to the “unreasonable result of having an overburdened district court system, as well
4 as an underutilized justices' court system... This result is unreasonable as well because it invests
5 the executive authority, the district attorney, with discretion to decide which court, the district or
6 the justices' court, will exercise jurisdiction” over the initial setting of bail on felony charges not
7 included in an information or indictment. *Kopp.*, 118 Nev. at 204, 43 P.3d at 343. “This result
8 would also defeat the broader public policies behind having one set of specially equipped courts”
9 dealing with initial appearances every day of the week, every day of the year. *Id.* “The
10 legislature would not have intended such a blurred result.” *Id.*

12 The recent legislative history around NRS 178.4849 (AB 424) makes clear it is the justice
13 courts that will be conducting the initial bail hearing “within 48 hours after a person has been
14 taken into custody” and releasing arrestees pursuant to the administrative order authorized in
15 NRS 178.4847.³ All of the discussion in the legislative hearings on AB 424 revolved around the
16 burden on the justice courts in the state to hold hearings every day of the week on new arrests,
17 felony and misdemeanor. There was absolutely no discussion from or about the district courts.
18 In fact, both the SJDC and Eighth Judicial District Courts recognized this when they submitted
19 fiscal notes indicating their courts would not be affected by the 48-hour requirement. *See*
20 *Exhibits A and B.*

22 During the debates of AB 424, it is clear Amendment 738 was offered to alleviate the
23 burden placed upon the justice courts to hold bail hearings every day of the year. In the adopted
24 language of Amendment 738, the Legislature expanded the jurisdiction of justices of the peace
25

26

³ Unless the administrative release is on arrests upon a filed indictment or information.

1 from county to statewide for initial appearances. The adopted language of Amendment 738 also
2 provides the authority for administrative releases (NRS 178.4847). It is clear that it is the justice
3 courts that are the “competent court of jurisdiction” referred to in Amendment 738 and NRS
4 178.4847 to administratively release felony arrestees (without an indictment or information).
5 There is no evidence Amendment 738 or NRS 178.4847 was intended to allow the district court
6 to decide who to release and what conditions to set on cases brought before the justice court for
7 the initial appearance bail hearing. SJDC is, therefore, not “a competent court” to make release
8 decisions on cases filed in RJC by criminal complaint or probable cause declaration listing RJC
9 as the jurisdiction for the arrest. *Id.* Allowing the SJDC to do so would also lead to absurd
10 results. Therefore, SJDC AO 2022-09 cannot control the release of any arrestees on new charges
11 at the WCDF except those on indictments or informations.

12
13 E. DAS is the Only Agency Statutorily Authorized to Supervise RJC Arrestees
14 Until the Case is Transferred to Another Court.

15 Pursuant to NRS 211A.080, “The governing body of each county or city may create a
16 department of alternative sentencing to provide a program of supervision for probationers and
17 *supervised releasees* in accordance with any conditions imposed by the court.” (emphasis
18 added). In 2005, pursuant to NRS 211A.080, the Washoe County Board of County
19 Commissioners created the Washoe County Department of Alternative Sentencing (DAS) “to
20 provide a program of supervision for probationers and *supervised releasees.*” (emphasis added).
21 Pursuant to NRS 211A.075, “‘Supervised releasees’ means a person who has been charged with
22 or convicted of a *misdemeanor, gross misdemeanor or felony* and *who has been released from*
23 *custody before trial* or sentencing, subject to the conditions imposed by the court.” (emphasis
24 added).
25
26

1 In NRS 211A.090, the Nevada Legislature vested DAS with the power to “supervise ...
2 a supervised releasee who, as a condition of ...pretrial or presentence release, is released under
3 the supervision of the department by the court.” NRS 211A.090 then details some of the
4 obligations DAS has in supervising a “supervised releasee,” including using “all reasonable
5 methods to assist ... a supervised releasee under the supervision of the department to improve
6 his or her conduct and comply with the terms or conditions of his or her ... pretrial or presentence
7 release.”
8

9 DAS has significant resources available to assist supervised releasees. DAS employs a
10 licensed social worker that served for years with Washoe County Health and Human Services
11 (WCHHS) and in that capacity was assigned to the Crossroads transitional living center and
12 before that was assigned for many years to the specialty courts of RJC. DAS has also been
13 awarded a grant to provide supervised releasees “with wrap-around support necessary to
14 successfully address foundational causes of opioid use disorder, as well as underlying
15 criminogenic behaviors,” including medically assisted treatment, mental health counseling, peer
16 support specialists, job training and housing. *See Exhibit C.*
17

18 DAS is located in and operates the Sober 24 facility which is open every day of the year
19 starting as early as 5:30 a.m. and as late as 8:30 p.m. so supervised releasees are not forced to
20 choose between complying with their conditions and their work or family obligations.⁴ The
21 Sober 24 facility has housed many services over the years to assist this population, including
22 WCHHS social workers, licensed counselors, WCSO personal, the Mobile Outreach Safety
23 Team (MOST), community college representatives, and volunteer attorneys. This LifeSavers
24
25
26

⁴ SJDC PTS has been closed to the public for more than two years, which has created considerable difficulties for arrestees without the technology to report electronically. DAS has been open to the public every day for more than two years.

1 award winning program was created at the request of RJC with partial funding from RJC grants
2 in order to provide much needed structure and support for RJC defendants.

3 In addition to offering urinalysis, oral fluid, and breath testing to detect the presence of
4 prohibited substances every day of the year, DAS manages their own testing lab and their own
5 remote testing, GPS, and residential confinement equipment. This provides immediate
6 notification of violations. DAS also provides the court, district attorney and public defender a
7 portal to view the compliance of pretrial arrestees with all the conditions ordered by the court.
8 SJDC PTS has historically used private vendors that often do not timely notify SJDC PTS or the
9 court of violations. Further, SJDC PTS does not provide detailed information on arrestee's
10 performance to RJC or the attorneys of record. In fact, SJDC PTS generally only provides
11 reports of violations.⁵ Without timely, accurate and complete information, RJC cannot
12 effectively ensure the appearance of the arrestees and the safety of the community.
13

14 SJDC PTS is comprised of employees of the SJDC. They are not social workers or POST
15 certified peace officers. DAS employs social workers and POST certified peace officers. To
16 ensure the safety of the community, the Nevada Legislature provided DAS the authority to
17 “arrest a supervised releasee without a warrant if there is probable cause to believe that the ...
18 supervised releasee has committed an act that constitutes a violation of ... pretrial or presentence
19 release.” NRS 211A.125. SJDC PTS does not have the power to arrest pretrial violators that
20 pose a risk to the community. Instead, SJDC PTS must submit a violation report to counsel and
21 the Court, and the court is then required to set a hearing pursuant to NRS 178.4851(7) before any
22 action can be taken. DAS, however, can arrest the pretrial releasee if their conduct poses a
23
24
25

26 ⁵ Since the NPRA was first implemented, RJC has asked for statistics verifying the court is releasing the right people. SJDC PTS has not provided this information. DAS has informed RJC they will when all RJC cases are assigned to them.

1 serious threat to public safety or risk of flight. Further, SJDC PTS simply does not have the tools
2 and resources DAS does to ensure the success of high risk and high need pretrial releasees and
3 thereby best ensure the safety of the community.⁶

4 For all of the above reasons, RJC began exclusively using DAS to supervise RJC pretrial
5 releasees. In SJDC AO 2022-09, the SJDC Chief Judge inappropriately orders SJDC PTS to
6 supervise all RJC felony pretrial arrestees and removes the power of the RJC judges to order
7 DAS and all their services for these RJC arrestees. This is not only contrary to the controlling
8 law, but also against the interests of pretrial release; to ensure the appearance of the arrestee and
9 the safety of the community. RJC has always been willing to facilitate the transfer of supervision
10 from DAS to SJDC PTS on the relatively small percentage of felony cases filed in RJC that are
11 bound over to the SJDC.⁷ In fact, this Order ensures the transfer will occur on every bind-over.

12
13
14 **F. SJDC PTS has No Power to Make Decisions on Behalf of RJC Including Who**
15 **is Released, What the Conditions of Release Are or Who Will Supervise RJC**
16 **Arrestees without the Express Authorization of RJC Judges.**

17 The pretrial services unit that would later become SJDC PTS was created in RJC, by RJC
18 judges, in 1983.⁸ Eleven years later, the unit was transferred to the SJDC. Since the move to
19 SJDC, RJC has enjoyed a positive and productive relationship with SCDC PTS. Originally,

20 ⁶ RJC has also asked SJDC PTS to use a DUI specific risk tool since the inception of the NPRA. To date, they have
21 not implemented such a tool. DAS did so within weeks of receiving the request. “Research has shown that the
22 criminogenic risk factors for DWI offenders look different than other criminal populations. As a result, generic
23 assessment tools typically score these individuals as low risk to re-offend though their behaviors often show
24 otherwise.” <https://www.appa-net.org/idarc/resources-using-the-ida.html>

25 ⁷ According to the latest statistics in the Annual Report of the Nevada Judiciary for FY 2021, there were 6,183
26 felony charges (3,638 felony cases) filed in the courts of Washoe County. Of that total, 4,172 of the charges (2,446
cases) were filed in the Reno Justice Court. The remainder were filed in the Sparks Justice Court, 1,960 charges
(1,162 cases), Incline Justice Court, 51 charges (30 cases), and Wadsworth Justice Court, zero charges (zero cases).
For the same fiscal year, there were 1,379 charges (992 cases) filed in the Second Judicial District Court (SJDC) in
Washoe County. Therefore, of all felony charges (and cases) filed in Washoe County, 67% were filed in the Reno
Justice Court. Further, of all felony charges (and cases) filed in Washoe County only 22% were ever filed in the
SJDC.

⁸ DAS likewise started in the Reno Justice Court when the Department 4 bailiff, Joe Ingraham, began monitoring
RJC defendants and then later became the first Chief of DAS after the legislature passed Chapter 211A and the BCC
created the department.

1 SJDC PTS employees would attend court in RJC every day to facilitate the release of RJC
2 arrestees and provide updates for the court. SJDC PTS also assisted RJC with the coordination
3 of RJC releases with the WCDF and performed some supervision of the arrestees. After many
4 years, SJDC PTS employees stopped attending RJC dockets and generally thereafter only report
5 violations of conditions, usually while seeking revocation of the release from custody.
6

7 When RJC volunteered to be a pilot court for the NPRA, SJDC PTS offered to prepare
8 the NPRA for RJC arrestees, which the court greatly appreciates. SJDC PTS has also proved
9 invaluable in coordinating the presentation to the RJC judges of the completed probable cause
10 declaration with the NPRA on each RJC arrestee so RJC judges could make release decisions on
11 all RJC arrestees twice a day, 365 days a year. SJDC PTS would then convey the RJC releasee
12 decisions to the WCDF and inform the arrestees of the decision and provide some supervision
13 of some RJC arrestees. SJDC has not only provided these services for RJC, but they have also
14 done so for all courts in Washoe County.
15

16 Shortly after RJC agreed to be a pilot NPRA court, RJC created a Praxis to
17 administratively release and set conditions of release for RJC arrestees, so they did not need to
18 wait for judicial review. The Praxis was later informally adopted by the courts of Washoe
19 County with several exceptions, the most notable are that both the Reno Municipal Court and
20 Sparks Municipal Courts insisted on supervising their releasees instead of SJDC PTS, and they
21 set their own conditions of supervision. There was never a contract between RJC and SJDC PTS
22 nor an MOU or administrative order that authorized all these activities.⁹
23
24
25

26 ⁹ Before the NPRA, there was, however, an administrative order signed by representatives from all State courts in Washoe County setting forth a bail schedule for the WCDF to use for arrests, felony, and misdemeanor. If any other such agreements exist on this subject, RJC hereby withdrawals from them.

1 SB 369 of the 81st session of the Nevada Legislature made several significant changes
2 to the pretrial release decision process. The bill adopts the strict scrutiny test developed by the
3 United States Supreme Court to analyze government actions that infringe upon fundamental
4 constitutional rights. The bill thereby requires judges make specific findings when deciding to
5 set bail or conditions of release. Specifically, the bill mandates “the court shall only impose bail
6 or a condition of release, or both, on a person as it deems to be the least restrictive means
7 necessary to protect the safety of the community or to ensure that the person will appear at all
8 times and places ordered by the court”. NRS 178.4851(1). The bill also requires, “If a court
9 imposes bail or any condition of release, or both, ... the court shall make findings of fact for
10 such a determination and state its reasoning on the record, and, if the determination includes the
11 imposition of a condition of release, the findings of fact must include why the condition of release
12 constitutes the least restrictive means necessary to protect the safety of the community or to
13 ensure that the person will appear at the times and places ordered by the court.” NRS
14 178.4851(3).
15
16

17 SB 369 was signed by the Governor of Nevada on June 8, 2021 and became effective
18 October 1, 2021. After the effective date, the undersigned instructed SJDC PTS to release all
19 RJC arrestees qualifying for release under the Praxis without conditions since the Praxis set
20 conditions on releasees without a “least restrictive means” analysis or findings for the conditions
21 in violation of SB 369. *See Exhibit D.* SJDC PTS refused to follow the direct order of the judge
22 of RJC deciding the release conditions of RJC arrestees. In December 2021, the RJC Chief
23 Judge informed SJDC administration of the vote of the RJC judges to release those qualified
24 under the Praxis without conditions until an administrative order complying with SB 369 could
25 be prepared. SJDC administration refused. Since then, countless arrestees have been required
26 to wait for an RJC judge to review the case and make the release decision and findings after they

1 should have been released without conditions. In February 2022, RJC submitted a draft
2 administrative order making the requisite findings supporting the release of certain arrestees and
3 the imposition of conditions. The draft administrative order directed SJDC PTS to release the
4 arrestees identified in the order with the conditions set forth therein. *See Exhibit E.* RJC was
5 informed the RJC draft administrative order would not be effective as RJC had no administrative
6 power over SJDC PTS so they would not be following it.

8 After SB 369 became effective, RJC also created and implemented a Judicial Release
9 Order (JRO) to expedite the release of arrestees and comply with the requirements of SB 369.
10 *See Exhibit F.* The JRO clearly sets forth the release decision of the judge in the particular case
11 with the conditions and necessary findings. The JRO also ensures compliance with NRS
12 178.4851, which requires the arrestee “sign a document before the person’s release stating that”
13 *inter alia*, “The person will comply with the other conditions which have been imposed by the
14 court and are stated in the document.”

16 Prior to the development of the JRO, jail staff were required to quickly take notes of the
17 judge’s ruling on the record during *Valdez-Jimenez* hearings every day. RJC also required two
18 clerks during the initial appearance docket, one to enter the event into the court’s case
19 management system and one to prepare a minute order of the release decision. Too often there
20 were inconsistencies between the actual stated decisions of the judge and the notes of the clerk
21 or jailer. The JRO is now filled out and signed by the judge making the decision on the bench
22 so there are no longer errors created by the old, inefficient system.

24 In the months since RJC adopted the new JRO form, SJDC PTS has yet to have the
25 arrestee sign the form and has instead prepared their own release paperwork which does not
26 comport with the RJC JRO or the requirements of NRS 178.4851 as amended by SB 369.
Attached as *Exhibit G* is a release acknowledgment recently received by RJC on an RJC arrestee

1 where the arrestee simply acknowledged release with “medium supervision”. This does not
2 satisfy the requirements of NRS 178.4851¹⁰. It also makes it difficult, and in some instances
3 impossible, for the court to enforce the conditions of release.

4 In some instances, SJDC PTS, without RJC authorization, prepares their own list of court
5 conditions and has the arrestee sign the document. These conditions often materially differ from
6 those ordered by the judge in the JRO which creates significant due process issues upon any
7 alleged violation. Attached as *Exhibit H* is a recent release acknowledgement prepared by SJDC
8 PTS after a JRO was issued by an RJC judge. In the JRO, *Exhibit I*, the RJC judge did not order
9 the arrestee to abstain from controlled substances or alcohol, yet the acknowledgement requires
10 the arrestee “to appear at all scheduled court appearances drug and alcohol free.” This is a vague
11 and unenforceable order made by SJDC PTS without the authority of the actual judge that set
12 the conditions or any judge of the court having jurisdiction over the matter.¹¹ The findings
13 required by SB 369 are also absent.

14 SJDC PTS only has authority to act on behalf of RJC where RJC has specifically
15 provided for such in writing. RJC hereby rescinds all prior formal or informal, written, or verbal
16 grants of authority to SJDC PTS regarding SJDC PTS authority to decide which RJC arrestees
17
18
19

20 ¹⁰ “If a court imposes bail or any condition of release, or both, other than release on recognizance with no other
21 conditions of release, the court shall make findings of fact for such a determination and state its reasoning on the
22 record, and, if the determination includes the imposition of a condition of release, the findings of fact must include
23 why the condition of release constitutes the least restrictive means necessary to protect the safety of the community
24 or to ensure that the person will appear at the times and places ordered by the court.”

25 ¹¹ See, *United States v. Scott*, 450 F.3d 863, 872 (9th Cir. 2006) (overturning pretrial drug test violation holding
26 “The government in this case has relied on nothing more than a generalized need to protect the community and a
blanket assertion that drug-testing is needed to ensure Scott’s appearance at trial. Both are insufficient”); See also,
Paley v. Second Jud. Dist. Ct., 129 Nev. 701, 704, 310 P.3d 590, 593 (2013) (“it is abundantly clear that ‘a positive
drug test result alone is not a sufficient basis to sustain a finding of direct contempt’” quoting *In re J.H.*, 213 P.3d
545, 549 (Okla.2008); see also *Cameron v. State*, 102 Md.App. 600, 650 A.2d 1376, 1381–82
(Md.Ct.Spec.App.1994) (reversing a finding of direct contempt against a party who appeared drunk in court because
“[h]e was in no way disruptive of the proceedings” and “was not rebellious or insubordinate” or “willfully
disobedient or openly disrespectful”); *In re J.H.*, 213 P.3d at 548–49 (reversing a finding of direct contempt against
parties who tested positive for cocaine prior to appearing in court because the parties were not “disorderly or
insolent” and did not “disturb[] or willfully obstruct[] the judicial proceedings”).

1 are released or which conditions to set on their release. Again, RJC greatly appreciates SJDC
2 PTS preparing the NPRA for all courts in Washoe County. RJC is hopeful this arrangement will
3 continue and, in this Order, RJC specifically provides authority for SJDC PTS to utilize the
4 NPRA on RJC arrestees pursuant to ADKT 539. It also authorizes SJDC PTS to collect and
5 deliver the completed declaration of probable cause sheets with the NPRA to RJC to facilitate
6 the timely release decisions required by the Nevada Legislature and Supreme Court. Finally, it
7 authorizes SJC PTS to facilitate the administrative release of RJC arrestees pursuant to this
8 Order.
9

10 G. The Praxis in SJDC AO 2022-09 Does Not Control the Release Decisions in
11 RJC.

12 SJDC AO 2022-09 sets forth release decisions for RJC arrestees. As discussed *supra*,
13 the SJDC is without such authority. SJDC AO 2022-09(1)(E) also sets forth a procedure for the
14 RJC Chief Judge to petition the SJDC Chief Judge if the RJC would like to change the
15 circumstances of releases of RJC arrestees stating, “In appropriate circumstances, should a
16 limited jurisdiction court request SJDC PTS release of arrestees/defendants with alternative or
17 additional circumstances/conditions than addressed in this AO, the chief judge of the court may
18 submit a proposal requesting the Chief Judge supplement this AO by finding in those
19 circumstances release is appropriate pursuant to NRS 178.4847.” *Id.* Again, as demonstrated
20 earlier, the SJDC Chief Judge does not have the judicial power to enforce any such procedure.
21 Therefore, RJC will not be following these statements in SJDC AO 2022-09.
22

23 Finally, section two of SJDC AO 2022-09 sets forth a governing body to decide which
24 felonies may be released under the Praxis and therefore SJDC AO 2022-09. The section states,
25 “The chief judges of the SJDC, Incline Village Justice Court, Reno Justice Court, Reno
26 Municipal Court, Sparks Justice Court, Sparks Municipal Court, and Wadsworth Justice Court,

1 will meet no less than two times each year to review the release praxis and *MJR list*. Any
2 amendments will be approved in accordance with the initiating documents establishing the same,
3 otherwise by majority vote.” RJC objects to this governing structure and does not agree to be
4 bound by it.

5 Incline and Wadsworth Justice Courts do not have and are not authorized by law to have
6 chief judges. NRS 4.157. Further, under SJDC AO 2022-09, the Wadsworth and Incline Justice
7 Courts, that collectively handle less than one percent of all felony charges and cases in Washoe
8 County, would have twice the voting power of RJC, which handles 67% of all felony charges
9 and cases in Washoe County.¹² Further, the procedure in SJDC AO 2022-09 would allow the
10 two municipal courts, that have no ability to decide bail on felonies, twice the vote of RJC.
11 Finally, it allows the SJDC a vote on the release of misdemeanor cases for which they have no
12 jurisdiction.

13
14 While consistency and uniformity are laudable goals, RJC handles the majority of the
15 felony arrests and charges in Washoe County, and their judges must have the ability to exercise
16 their judicial power to decide which RJC arrestees are released and with what conditions. There
17 is no other effective way for the RJC judges to ensure the appearance of the defendant and safety
18 of the community. Since the new laws (AB 424 and SB 369) became effective, RJC has
19 attempted to work with SJDC PTS to ensure the laws were followed and arrestees’ rights were
20 honored while respecting community safety. After many months, many meetings, and the
21
22

23
24 ¹² According to the latest statistics in the Annual Report of the Nevada Judiciary for FY 2021, there were 6,183
25 felony charges (3,638 felony cases) filed in the courts of Washoe County. Of that total, 4,172 of the charges (2,446
26 cases) were filed in the Reno Justice Court. The remainder were filed in the Sparks Justice Court, 1960 charges
(1162 cases), Incline Justice Court, 51 charges (30) cases, and Wadsworth Justice Court, zero charges (zero cases).
For the same fiscal year, there were 1379 charges (992 cases) filed in the Second Judicial District Court (SJDC) in
Washoe County. Therefore, of all felony charges (and cases) filed in Washoe County, 67% were filed in the Reno
Justice Court. Further, of all felony charges (and cases) filed in Washoe County only 22% were ever filed in the
SJDC.

1 issuance of SJDC AO 2022-09, it has become clear this Administrative Order is regrettably
2 necessary.

3 SJDC PTS has been an invaluable partner since leaving RJC. The willingness of SJDC
4 PTS to prepare the NPRA on all arrests at the WCDF pursuant to ADKT 539 has proven very
5 valuable to the citizens of Washoe County. Without this arrangement, each of the limited
6 jurisdiction courts in Washoe County would be required to staff the WCDF 24 hours a day, 365
7 days a year. The RJC is very thankful for the assistance of SJDC PTS and hopeful the assistance
8 will continue. RJC believes SJDC PTS preparing the NPRA for all courts in Washoe County
9 while DAS supervises RJC arrestees will provide the most efficient and effective pretrial
10 program for the community. SJDC PTS currently prepares NPRAs for the municipal courts in
11 Washoe County even though the municipal courts have chosen to supervise their own arrestees.
12 RJC is hopeful their arrestees will receive the same accommodations.

13
14 **Therefore, good cause appearing, pursuant to the authorities cited *supra*, the Court hereby
15 enters this administrative order:**

- 16 1. Only sitting judges of the Reno Justice Court may set the initial release conditions
17 of arrestees at the Washoe County Detention Facility who have been arrested
18 pursuant a complaint filed in the Reno Justice Court or a declaration of probable
19 cause listing the Reno Justice Court as the court of jurisdiction (RJC Arrestees).
Therefore, SJDC AO 2022-09 does not apply to RJC arrestees.
- 20 2. The Court hereby grants SJDC Pretrial Services the authority to utilize the NPRA
21 on all RJC Arrestees pursuant to ADKT 539 and requests they continue to do so.
- 22 3. Pursuant to NRS 178.484(7), “A person arrested for a battery that constitutes
23 domestic violence pursuant to NRS 33.018 must not be admitted to bail sooner
24 than 12 hours after arrest.”
- 25 4. Pursuant to NRS 178.484(5), “A person arrested for a violation of NRS 484C.110,
26 484C.120, 484C.130, 484C.430, 488.410, 488.420 or 488.425 who is under the
influence of intoxicating liquor must not be admitted to bail or released on the
person’s own recognizance unless the person has a concentration of alcohol of
less than 0.04 in his or her breath.”

- 1 5. Pursuant to NRS 178.484(6), "A person arrested for a violation of NRS 484C.110,
2 484C.120, 484C.130, 484C.430, 488.410, 488.420 or 488.425 who is under the
3 influence of a controlled substance, is under the combined influence of
4 intoxicating liquor and a controlled substance, or inhales, ingests, applies or
5 otherwise uses any chemical, poison or organic solvent, or any compound or
6 combination of any of these, to a degree which renders the person incapable of
7 safely driving ... must not be admitted to bail or released on the person's own
8 recognizance sooner than 12 hours after arrest."
- 9 6. All RJC Arrestees who are not administratively released pursuant to this Order
10 shall have their *Valdez-Jimenez* hearing at their NRS 178.178 initial appearance.
- 11 7. When the State will be requesting bail for a particular defendant, they must do so
12 at the initial appearance of the defendant in the Reno Justice Court.
- 13 8. When the State makes a request for bail, "the State must prove by clear and
14 convincing evidence that bail, rather than less restrictive conditions, is necessary
15 to ensure the defendant's appearance at future court proceedings or to protect the
16 safety of the community." *Valdez-Jimenez*.
- 17 9. At the initial appearance, the defendant, with the assistance of counsel, "shall be
18 afforded the right to testify and present evidence." *Valdez-Jimenez*.
- 19 10. Consistent with the procedures in the Bail Reform Act, the Court may grant a
20 brief continuance to either party for good cause shown.
- 21 11. Consistent with the procedures in the Bail Reform Act, a rehearing of the
22 detention decision will generally only be granted when the judicial officer that
23 conducts the hearing finds, based upon an affidavit or declaration, there exists
24 new evidence not known at the time of the hearing that has a material bearing on
25 the custody determination.
- 26 12. Pursuant to NRS 211A.110 and 211A.125, DAS shall notify the court when an
arrestee that is released by the Reno Justice Court is arrested for a subsequent
offense or violates any other condition of their release.
13. Pursuant to NRS 178.4851(7), any notice of a violation of the conditions of
pretrial release must be provided to the attorneys for the State and Defendant.
The violation will then be addressed at the next scheduled hearing unless either
party requests a hearing at an earlier date. Requests made by counsel pursuant to
this section must be set within 7 judicial days.
14. Pursuant to NRS 178.502, all bail amounts for pretrial cases in the Reno Justice
Court may be satisfied by the posting of 10% of the bail amount in cash at the
Reno Justice Court or the Washoe County Detention Facility except those
arrested for the following charges and unless specifically ordered otherwise by a

1 judge of the Reno Justice Court in a particular case or the matter has been bound-
2 over to the District Court;

3 A. All Category A felonies or attempts to commit Category A felonies;

4 B. All Category B felones that involve a human victim, firearm, or residential
5 burglary.

6 15. The release decisions of the Reno Justice Court may not be adjusted or altered by
7 any other court or agency unless or until the matter is properly transferred to
8 another court.

9 16. Pursuant to NRS 178.4847, the Court hereby authorizes DAS, RJC employees
10 and SJDC Pretrial Services employees to facilitate the release of the following
11 RJC Arrestees under the following conditions:

12 A. All those scoring as low or moderate risk on the NPRA except for those
13 arrested for crimes classified as category A or B felonies by the Nevada
14 Legislature. Additionally, those arrested for a crime of violence (NRS
15 Chapter 200) or a crime involving a minor child, a sexual act, or a firearm,
16 regardless of class or category of crime, shall not be released administratively
17 under this Order.

18 B. This administrative release does not apply to, "A person arrested for a felony
19 who has been released on probation or parole for a different offense"; or "A
20 person arrested for a felony whose sentence has been suspended pursuant to
21 NRS 4.373 or 5.055 for a different offense, or who has been sentenced to a
22 term of residential confinement pursuant to NRS 4.3762 or 5.076 for a
23 different offense"; or a person on supervised release arrested on a new felony
24 that is a subsequent offense. (NRS 178.484 and NRS 178.487).

25 C. Pursuant to NRS 178.484(8), "A person arrested for violating a temporary or
26 extended order for protection against domestic violence issued pursuant to
NRS 33.017 to 33.100, inclusive, or for violating a restraining order or
injunction that is in the nature of a temporary or extended order for protection
against domestic violence issued in an action or proceeding brought pursuant
to Title 11 of NRS, or for violating a temporary or extended order for
protection against stalking, aggravated stalking or harassment issued pursuant
to NRS 200.591, or for violating a temporary or extended order for protection
against sexual assault pursuant to NRS 200.378" must not be administratively
released under this order.

D. It is further ordered that, pursuant to NRS 178.4851, all arrestees released
under this order shall have no conditions upon their release except as
otherwise ordered herein.

E. Pursuant to NRS 178.4851, the Court hereby finds that the following
conditions of release for those administratively released under this Order

1 constitute the least restrictive means necessary to protect the safety of the
2 community or to ensure the arrestee will appear at the times and places
3 ordered by the court:

- 4 1. Pursuant to NRS 178.4851(1)(b), in all cases involving a named victim,
5 the court finds it is necessary, to protect the safety of the community and
6 the named victim, to order the arrestee to have no contact with the named
7 victim or attempt to cause another to contact the named victim, and to
8 remain at least one hundred feet away from the named victim. *See Nev.*
9 *Const. Art. 1, § 8A(1)(c).* One civil standby with law enforcement may
10 be allowed for co-habitants.
- 11 2. Numerous studies have demonstrated providing court reminders to
12 arrestees increases the chances the arrestee appears at court; therefore,
13 DAS shall provide all arrestees sent to them for supervised check-ins court
14 reminders by text, e-mail and/or a telephone call.
- 15 3. All citizens must obey all laws. Further, pursuant to NRS 178.487,
16 “[e]very release on bail with or without security is conditioned upon the
17 defendant’s good behavior while so released.” Therefore, all arrestees are
18 hereby ordered to obey all laws.
- 19 4. In order to ensure the arrestee’s appearance at court, anyone with a
20 heightened risk of failing to appear shall be required to check-in with DAS
21 at least weekly when first released. This group includes all arrestees with
22 an indication on the NPRA of a history of failing to appear or failing to
23 comply with a court order in the preceding two years and arrestees with
24 an open case at the time of arrest be that pretrial, probation, parole or a
25 suspended sentence, and all arrestees that score a moderate or higher risk
26 on the NPRA.
5. Pursuant to NRS 178.4851(1)(e), the court finds it necessary to ensure the
safety of the community and appearance of the arrestee at court that all
arrestees arrested for a crime involving a controlled substance and all
arrestees deemed to have a history of substance abuse on the NPRA shall
be required to test randomly by calling SOBER 24 every day and
providing a urinalysis sample when required, such frequency must be at
least two out of every seven days of the week including weekends and
holiday in order to meet the best practices for drug testing.
6. Pursuant to NRS 178.4851(1)(e), the court finds it necessary to ensure the
safety of the community and appearance of the arrestee at court that all
arrestees arrested for a crime involving driving under the influence shall
be required to submit to urinalysis if the alleged crime involved a
controlled substance or they are deemed to have a history of substance
abuse on the NPRA. This testing will be as set forth above in (6). If the
case involves alcohol, the arrestee must be tested a minimum of twice

1 daily for alcohol in a manner chosen by DAS. If these arrestees are later
2 determined to be low risk to reoffend pursuant to a validated DUI risk tool
(DUI-RANT, CARS, IDA) the testing condition may be removed.

3 7. In order to ensure compliance with all release conditions set forth herein
4 all arrestees released under this Order shall report to DAS (*Sober 24 at*
5 *1530 E. 6th Street, Reno, NV (775)221-8400*) within 24 hours of their
6 release where they will be notified of their next court date and the
procedures to follow to comply with the Order.

7 8. The administrative release decisions and conditions under this section are
8 interim. Either party may request a hearing to address these conditions
9 without filing a formal motion and the court will set an expedited hearing
10 within 7 days. Pro se arrestees may request an expedited hearing before
11 they obtain counsel. However, if the arrestee has counsel, the request
must be made by counsel. Victims may contact the court but should
generally make their request through the district attorney's office so they
may assist with the request.

12 **IT IS SO ORDERED,**

13 Dated this 15th day of March 2023.

14 

15 _____
16 SCOTT E. PEARSON
17 CHIEF JUDGE
18
19
20
21
22
23
24
25
26

1 Arrestee:

Case No:

PCN No:

2
3 **RJC Administrative Judicial Release Order Acknowledgment**

4 I understand I am being released pursuant to RJC AO 2022- 06.

5 I understand that as a condition of my release I must:

- 6 (1) obey all laws and the conditions in this Order,
- 7 (2) appear at all times and places ordered by the Court,
- 8 (3) inform the Court and DAS of any change in my phone number & email as soon as possible, and
- 9 (4) I waive all rights relating to extradition proceedings in this case.

10 If I violate this Order, I may be: (a) charged with a misdemeanor; (b) found in contempt pursuant to NRS 22.010, (c) have these conditions modified; (d) have my release revoked and be remanded to custody, (e) any other legal punishment.

11 Furthermore, if the crime(s) I was arrested for involves any of the following, I am subject and agree to the additional conditions listed below:

- 12 • If the crime involves a victim – I must not have any contact with the victim and cannot attempt to cause another to contact the victim and must remain at least one hundred feet away from the victim.
- 13 • If the crime involves drugs or I have a drug history on the NPRA – I must test randomly by calling DAS/SOBER 24 every day and providing a urinalysis sample when required, such frequency must be a minimum of two out of every seven days of the week including weekends and holiday.
- 14 • If I have a prior failure to appear or comply with a court order or sentence in the last two years – I must check-in with DAS at least weekly until ordered otherwise.
- 15 • If I scored a moderate or higher risk on the NPRA – I must check-in with DAS at least weekly until ordered otherwise.
- 16 • If the crime involves driving under the influence – I must test as indicated in the Nevada 24/7 Sobriety Program (NRS 484C.392) unless I am found to be low risk to re-offend by a validated DUI risk tool (DUI-RANT, CARS, IDA).
- 17 • I must appear at DAS within 24 hours of my release at Sober 24 at 1530 E. 6th Street, Reno, NV (775)221-8400.

18 Arrestee’s Signature: _____ Date: _____

19 *Any law enforcement officer may arrest the person in this Order if the officer has probable cause to believe that the person has violated a condition of this Order.*