

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE SAN BERNARDINO COUNTY PROBATION DEPARTMENT
AND THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO**

I. PURPOSE

This Memorandum of Understanding ("Agreement") between the San Bernardino County Probation Department ("PROBATION"), a local government agency, and the Superior Court of California, County of San Bernardino ("the COURT"), an entity of the state of California (individually, a "Party"; collectively, the "Parties"), is effective and enforceable upon approval by the San Bernardino County Board of Supervisors.

WHEREAS, Senate Bill 129 (Stats. 2021, Ch.69) amended the Budget Act of 2021, and provides funding for "the implementation and operation of ongoing court programs and practices that promote the safe, efficient, fair, and timely pretrial release of individuals booked into jail."

WHEREAS, the purpose of the funding is to provide every superior court with information and resources to support judicial officers in making pretrial release decisions that impose the least restrictive conditions to address public safety and return to court, and to implement appropriate monitoring practices and provision of services for released individuals.

WHEREAS, Senate Bill 129 permits courts to "contract with any county department, including county probation departments, to provide pretrial services, except those departments or agencies that have primary responsibility for making arrests or prosecuting criminal offenses" ("Pretrial Release" or "Pretrial Release Program").

WHEREAS, PROBATION, and the COURT are responsible for determining the roles and responsibilities for the implementation of a Pretrial Release Program and wish to delineate and memorialize their understanding and responsibilities in written form.

NOW THEREFORE, the Parties agree as follows:

II. TERM

This Agreement shall commence on April 26, 2022, and expires on April 25, 2027, but may be terminated earlier in accordance with the provisions of this Agreement.

III. SCOPE OF SERVICES; ROLES & RESPONSIBILITIES

a. PROBATION

i. General Administrative Responsibilities

1. Provide quarterly budget updates detailing expenditures, checkpoint meetings to provide detailed actual and

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estimated variances by expenditure information for both the one-time and ongoing funding source and as requested by the COURT sources. All financial records are subject to audit and funds must be spent appropriately as required pursuant to Senate Bill 129. Changes to the authorized budgets for both one-time and ongoing funds are subject to the COURT'S review and prior approval.

2. Provide job descriptions that identify the essential functions of personnel assigned to support the Pretrial Release Program.
3. Consult with the COURT before entering into any sub-contracts related to Pretrial Release services. Sub-contracts shall align with the provisions set forth in Senate Bill 129 as well as the COURT'S agreement with the Judicial Council of California ("JCC"). PROBATION shall ensure that all sub-contracts comply with the terms and conditions of this Agreement and any other applicable laws, rules and regulations.

ii. Operational Responsibilities

1. Identify individuals booked on felony bookings (excluding serious [PC1192.7(c)] and violent [PC667.5(c)] felonies, DUI, and Domestic Violence felonies, warrants, violations of probation and parole) for Pretrial Release and monitoring using the Public Safety Assessment (PSA) risk assessment tool unless a different tool is agreed upon between the Parties. Upon agreement between the Parties and subject to available funding, additional exclusions and expansion of case scenarios may be identified at a later time and added to the Pretrial Release Program including, but not limited to, the addition of assessments on Domestic Violence, DUI, serious and violent felonies, and misdemeanors.
2. Prepare reports for the COURT containing the assessed individual's current charges, assessment score, recommendations for release, conditions for release and criminal history and upload completed reports to the designated file transfer protocol ("FTP") site within twenty-four (24) hours from time of booking, excluding weekends and COURT holidays. Assessments and recommendations shall be submitted to the COURT by 5:00 p.m. on the next working day after weekends and COURT holidays. However,

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memorandums or other written materials describing or explaining why an assessment was not performed need not be submitted.

3. Upon the reporting of individuals to PROBATION, PROBATION staff shall review COURT ordered Pretrial Release conditions with individuals and arrange for individuals' signatures on applicable documents. PROBATION staff shall also provide individuals with program enrollment information as well as administrative support and assistance for PROBATION'S check-in process through which individuals may receive court reminders.
4. Monitor individuals' Pretrial Release to ensure that they comply with the COURT'S orders. If, at any time, PROBATION would like to request modified terms and conditions of release, a request with a proposed order may be uploaded to the designated FTP site for judicial review at the next hearing. Recommended modifications must be included in the request and proposed order.
5. PROBATION may file a petition to revoke or terminate Pretrial Release at any time for judicial review or action.
6. Collect statistical data as described by the JCC for individuals assessed with the PSA or other agreed upon Pretrial Release risk assessment tool.
7. Data Collection and Reporting: On an annual basis, collect and report select data elements to the COURT on a form, template or other reporting mechanism approved by the JCC.

iii. Information Technology Responsibilities

1. Provide electronic assessment reports to the COURT using the designated FTP site to exchange documents between PROBATION and COURT.
2. Maintain stakeholder access to Pretrial Release reports. Stakeholders include San Bernardino County District Attorney's Office, and San Bernardino County Public Defender's Office.

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3. Develop, procure, and/or enhance SMS Text Messaging notification system to communicate court appearance reminder text messages to individuals released on Pretrial Release.
4. Develop, procure, and/or enhance systems to collect data on all persons released on Pretrial Release, associated bookings, assessment and case management for Pretrial Release services.
5. Support data sharing between the COURT, PROBATION, and the San Bernardino County Sheriff's Department. Provide collected data to the COURT monthly.

iv. **Financial Reporting and Activities**

1. Maintain within the County's financial accounting system (SAP) an accurate accounting by both one-time and ongoing funding sources of all allowable costs pursuant to Senate Bill 129 and include appropriate supporting documentation including, but not limited to, tracking by designated project codes, of expenses incurred, as follows:
 - i. Personnel salary and benefit documentation, including time sheets and EMACS reports by pay period, that will support data reported in SAP;
 - ii. Costs associated with automated systems and processes;
 - iii. Pretrial assessment, monitoring, and direct program expenses; and
 - iv. Administrative expenses.
2. PROBATION shall provide quarterly Year End Estimate financial reports aligned with their approved program budget, within 10 business days of close of the quarter. Any significant changes to the program budget must be approved by the COURT in writing.
3. PROBATION, pursuant to Senate Bill 129, shall return any unspent funding allocations in the form of a warrant to the COURT as follows:

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- i. Ongoing funding shall be returned before the end of the last day of July, of the following fiscal year the funds were received.
- ii. One-time funding shall be returned no later than the last day of July 2024.

b. The COURT

i. Administrative Responsibilities

- 1. Identify target population for Pretrial Release consideration at arraignment.
- 2. Annual Budget: Submit an annual budget detail sheet to the JCC, on a form, template, or other reporting mechanism approved by the JCC. In the event the COURT modifies its budget, the COURT shall report the modification in its next quarterly report to the JCC.
- 3. Quarterly Progress Report: Submit quarterly progress reports to the JCC, on a form, template or other reporting mechanism approved by the JCC, that list, among other things, all expenses incurred during that time period. These reports should also identify and explain any difficulties with respect to spending funds or administering the Pretrial Release Program and how JCC can best support the COURT to resolve any challenges.
- 4. Data Collection and Reporting: On a quarterly basis, the COURT will collect and report select data elements to the JCC on a form, template or other reporting mechanism approved by the JCC.
- 5. Initiate all communications to stakeholders and the public.
- 6. Schedule stakeholder meetings.
- 7. Create written procedures, FAQs, and bench guides for internal use.
- 8. Measure success of the Pretrial Release Program post implementation and determine sustainability and expansion options.

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9. Audit all financial records to ensure compliance with approved program budget and the provisions set forth in Senate Bill 129.

ii. Operational Responsibilities

1. Update the COURT'S case management system for all cases involving Pretrial Release.
2. Educate staff and bench officers.

iii. Information Technology Responsibilities

1. Establish dynamic interface for electronic reports from PROBATION and update case management system.
2. Capture Pretrial Release outcomes in case management system.
3. Maintain dynamic interface that permits PROBATION to retrieve minute orders for Pretrial Release outcomes from the COURT'S case management system within 24 hours from the time the minutes are completed. Establish and provide daily report of Pretrial Release outcomes for each individual assessed by PROBATION.
4. Source data from case management system and other processes for reporting to the JCC.

iv. Financial Reporting and Activities

1. The COURT shall have access to extract from the County's financial accounting system (SAP) financial activity for both one-time and ongoing financial activity for the purpose of, but not limited to:
 - i. Analyzing supporting documentation to verify all costs are allowable pursuant to Senate Bill 129. If any costs are deemed unallowable, the COURT will request PROBATION to reallocate those costs;
 - ii. Reconciling actual costs with quarterly Year End Estimates provided by PROBATION; and

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- iii. Updating the COURT'S financial data base with PROBATION's financials to process reports for the funding source, the JCC.
- 2. The Court will transfer all funds, via warrant, to PROBATION as follows:
 - i. FY 2021-22 one-time and ongoing funding in one lump sum, no later than July 15th, 2022; and
 - ii. Available subsequent ongoing annual funding, one month following the COURT'S receipt of funding from the JCC, in one lump sum, for each respective fiscal year.
- 3. Upon the review of the 3rd Quarter Year End Estimate, the COURT and PROBATION agree to the following:
 - i. the COURT may transmit unspent funds if available;
 - ii. PROBATION shall notify the COURT of any actual or anticipated unspent funds; and
 - iii. PROBATION shall work with the COURT to return unspent funds in a timely manner, as required by the COURT and the JCC.

IV.FUNDING ALLOCATIONS

The JCC has allocated to the COURT a one-time funding amount of \$7,183,250, which must be encumbered or expended by June 30, 2024 as well as an additional \$3,926,075 for the first year of ongoing program funding (FY 2021-2022) which must be encumbered or expended by June 30, 2022. Subsequent annual ongoing allocations are determined by the JCC. The JCC is mandated to distribute the allocation amount for all superior courts based on each county's relative proportion of the state population ages 18 to 25. The funds allocated to PROBATION each year shall be at least 70% of the entire ongoing funding allocation; the one-time allocation shall remain unchanged.

a. PROBATION

- i. PROBATION receives 70% of allocated one-time funding (equal to \$5,028,275). One-time funds are available through June 30, 2024, and must be encumbered or expended by that date.

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- ii. PROBATION annually receives 70% of ongoing allocated funding (equal to \$2,748,253 for FY 2021-2022). Annual funds must be encumbered or expended within the appropriate fiscal year and will not be available after June 30 of each fiscal year.

b. The COURT

- i. The COURT retains 30% of allocated one-time funding (equal to \$2,154,975). One-time funds are available through June 30, 2024, and must be encumbered or expended by that date.

- ii. The COURT annually retains 30% of ongoing allocated funding (equal to \$1,177,822 in FY 2021-22). Annual funds must be encumbered or expended within the appropriate fiscal year and will not be available after June 30 of each fiscal year.

- iii. The COURT is not required to keep entirety of retained funds and has the option to share allocation with other county departments for costs associated with the Pretrial Release Program so long as cost-sharing is conducted in accordance with Senate Bill 129.

- 1. The COURT and PROBATION shall establish quarterly checkpoints to review funding allocations, expenditures, and projected expenditures to determine if a one-time adjustment to funding is feasible no later than April of every year. Conversely, PROBATION will be required to return funds to the COURT by the agreed upon dates in order to properly account for unspent funds and return them to the JCC.
- 2. If costs related to the Pretrial Release Program exceed the COURT'S initial allocation to PROBATION, PROBATION may ask the COURT for a greater portion of allocation by contacting the Pretrial Release Program Manager. Requests shall be made before PROBATION expends funds in excess of the initial agreed upon allocation as set forth in this Agreement.

V. IMPLEMENTATION GOALS

The goal is to implement a Pretrial Release Program that meets the requirements of Senate Bill 129 on or before June 30, 2022.

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VI. GENERAL PROVISIONS

1. Amendment or Modification. Except as otherwise provided in this Agreement, the Agreement may be amended or modified only in writing and with the prior written consent of the Parties.
2. Applicable Law and Venue. This Agreement is formed in San Bernardino County, California and the rights and obligations of the Parties will be governed by and construed and interpreted in accordance with the laws of the State of California, the California Rules of Court, and the Superior Court of California, County of San Bernardino Local Rules. The foregoing notwithstanding, each Party is subject to any and all applicable federal and state laws, codes, legislative acts, regulations, ordinances, rules, rules of court, and orders. The Parties further agree that the venue of any action or claim brought by either Party to the Agreement will be the Superior Court of California, County of San Bernardino, San Bernardino District. Each Party hereby waives any law or rule of court, which would allow them to request or demand a change of venue. If any action or claim concerning the Agreement is brought by any third party and filed in another venue, the Parties agree to use their best efforts to obtain a change of venue to the Superior Court of California, County of San Bernardino, San Bernardino District.
3. Audits. Each Party has the right to inspect, copy, or audit any record or documentation related to this Agreement, including records related to billings and other financial records during normal business hours. Each Party shall retain all records and documentation for a period of at least four (4) years following final payment under this Agreement. Without limiting the foregoing, this Agreement is subject to examinations and audit by the State Auditor for a period of three (3) years after final payment.
4. Counterparts/Electronic Signatures. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The Parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other email transmission), which signature shall be binding on the Party whose name is contained therein. Each Party providing an electronic signature

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agrees to promptly execute and deliver to the other Party an original signed Agreement upon request.

5. Dispute Resolution. In the event of any dispute arising out of or relating to this Agreement, the Parties shall attempt, in good faith, to promptly resolve the dispute. If the dispute cannot be resolved by mutual agreement, the dispute shall be elevated to the Court Executive Officer or designee and the Chief Probation Officer to resolve the issue.

Regardless of the dispute, the Parties shall, without delay, continue in good faith to perform their respective obligations under this Agreement.

6. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all previous modifications, agreements, proposals, negotiations, representations, and commitments, both oral and written, between the Parties.
7. Further Assurances. Each Party agrees to cooperate with the other, and to execute and deliver, or cause to be executed and delivered, all such other instruments and documents, and to take all such other actions as may be reasonably requested of it from time to time, in order to effectuate the provisions and purposes of this Agreement.
8. Indemnification. Each Party will indemnify and hold the other Party harmless, to the maximum extent permitted by law, from claims, damages, liabilities, costs and expenses, including attorneys' fees and costs, that arise out of that Party's performance of this Agreement, except that neither Party is responsible for that portion of a claim, damage, liability, cost or expense that occurs by reason of the wrongful acts or negligence or willful misconduct of the other Party or of its agents, officials, or employees.
9. Independent Contractor. Each Party will be, and is, an independent contractor, and is not an employee or agent of the other Party, and neither Party nor any person engaged by a Party to perform the services described herein is covered by any employee benefit plans provided to the employee of the other Party. Each Party is liable for the acts and omissions of itself, its employees, its subcontractors and its agents. Nothing in this Agreement will be construed as creating an employment or agency relationship

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between the Parties. Each Party will determine the method, details and means of performing its obligations under this Agreement, including, without limitation, exercising full control over the employment, direction, compensation and discharge of all persons assisting the respective Party. Each Party will be solely responsible for all matters relating to the payment of its employees, including compliance with social security, withholding any and all employee benefits, and all regulations governing such matters.

10. Insurance. Each Party is an authorized self-insured public entity for purposes of Professional Liability, General Liability, Automobile Liability and Workers' Compensation and warrant that through their respective programs of self-insurance, they have adequate coverage or resources to protect against liabilities arising out of the performance of the terms, conditions or obligations of this Agreement.
11. Notices to the Parties. All notices, requests, demands, and other communications pertaining to this Agreement must be in writing and will be deemed to have been duly given when hand delivered, or five (5) days after being deposited in the United States mail, if addressed to the respective Parties as set forth below:

PROBATION:	COURT:
Tracy Reece	Nancy CS Eberhardt
Chief Probation Officer	Court Executive Officer
San Bernardino County Probation Department	Superior Court of California, County of San Bernardino
175 West Fifth Street	247 West Third Street, 11 th floor
San Bernardino, CA 92415-0460	San Bernardino, CA 92415-0302

12. Risk Allocation. It is the intention of both Parties that neither will be responsible for the negligent and/or intentional acts and/or omissions of the other, or its judges, subordinate judicial officers, directors, officers, agents and employees. The Parties therefore disclaim in its entirety the pro rata risk allocation that could otherwise apply to this Agreement pursuant to Government Code section 895.6. Instead, pursuant to Government Code section 895.4, the Parties agree to use principles of comparative fault when apportioning any and all losses that may arise out of the performance of this Agreement.

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13. Severability. The provisions of this Agreement are separate and severable. If any provision of this Agreement is held invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby. Any such provision will be enforced to the maximum extent possible so as to affect the reasonable intent of the Parties and will be reformed without further action by the Parties to the extent necessary to make such provision valid and enforceable.
14. Waiver. Any waiver by either Party of the terms of this Agreement must be in writing and executed by an authorized representative of the waiving Party and will not be construed as a waiver of any succeeding breach of the same or other term of this Agreement.

VII. TERMINATION

Either Party may terminate this Agreement by giving at least ninety (90) days' written notice to the other Party.

IN WITNESS WHEREOF, the Parties have each caused this Agreement to be subscribed by its respective duly authorized officers, on its behalf.

**PROBATION DEPARTMENT OF
SAN BERNARDINO COUNTY**

☐ 
Tracy Reece
Chief Probation Officer

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN BERNARDINO**

☐ 
Hon. R. Glenn Yabuno
Presiding Judge