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## **PROGRAM GUIDANCE MEMORANDUM**

### *SB 129 Pretrial Release Program Funding*

**Date Released: October 25, 2021**

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## 1.0 SENATE BILL 129

Senate Bill 129 (Stats. 2021, ch. 69), amending the Budget Act of 2021, 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.”<sup>1</sup> SB 129 appropriates funding of \$140 million in fiscal year (FY) 2021–22, and \$70 million in ongoing funding to the Judicial Council of California (Judicial Council) for distribution to the courts for these purposes.

The purpose of the funding, as specified in SB 129, 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.

## 2.0 AWARDS AND FUNDING

On October 1, 2021, the Judicial Council approved funding recommendations from the Trial Court Budget Advisory Committee and Judicial Branch Budget Committee regarding the allocation of the funding. Approved funding allocations for each court can be found in Attachment A.

### 2.1 Funding Allocations

SB 129 specifies two formulas for the Judicial Council to use in distributing pretrial release program funding:

- ***One-time funding for non-Pretrial Pilot Program courts***  
Half of the budget-year funding (\$70 million) is to be distributed to the 41 superior courts that did not receive Pretrial Pilot Program funding (provided in the Budget Act of 2019), with funding allocated to the courts based on each county’s relative proportion of the state population 18 to 25 years of age. The funds are available for encumbrance or expenditure for three fiscal years, until June 30, 2024.
- ***Ongoing funding for all courts***  
The Judicial Council is mandated to distribute the remaining \$70 million in budget-year funding to *all* superior courts based on each county’s relative proportion of the state population ages 18 to 25. These funds must be encumbered or expended by June 30, 2022. It is anticipated that \$70 million in ongoing funding will be provided for

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<sup>1</sup> Sen. Bill 129, § 4, item 0250-101-0001, provision 9.

pretrial release programs for all the superior courts in future years, and that the allocation will be based on the same formula.

***Funding floor***

A minimum funding floor of \$200,000 was recommended and approved for both funding formulas. This was based on an analysis of planned budgets versus actual spending by small courts participating in the Pretrial Pilot Program. It is also equivalent to the floor used in the funding methodology for the California Community Corrections Performance Incentives Act of 2009 (SB 678). This floor will ensure that both small and small/medium courts have the resources necessary to comply with the legislation.

**2.2 Disbursements of Funds**

The Judicial Council is responsible for distributing the allocations in both funding formulas to the courts. Funds will be disbursed through State Controller’s Office apportionment. Allocations are expected to be included in the November 2021 distribution to the courts.

**2.3 Compliance and Right to Audit**

The use of these funds is restricted solely to the implementation of SB 129. Court staff will monitor spending to ensure compliance with the language of SB 129. Judicial Council staff may monitor spending regarding the courts’ compliance with the language of SB 129.

To assist the Judicial Council in tracking compliance, courts will be required to submit an annual budget worksheet and quarterly narrative reports (described in detail in Section 4.0). Judicial Council staff will have the right to audit quarterly and annual transactions against eligible and ineligible expenses, as outlined by the Legislature.

The court must maintain all financial records, supporting documents, and all other records relating to expenses under the program in accordance with state law and/or the [\*Trial Court Financial Policies and Procedures Manual\*](#). The court must permit the authorized representative of the Judicial Council or its designee to inspect or audit, at any reasonable time, any records related to the SB 129 funding for pretrial programs.

Court staff are responsible for responding to Judicial Council audit queries and providing all necessary information and documentation to address any concerns. In the event that an audit indicates expenditure of the funds on costs other than those listed in SB 129, the Judicial Council may retract a court’s unspent funds and hold further disbursements until any outstanding issues are resolved.

### **3.0 PROGRAM REQUIREMENTS**

This guidance document seeks to clarify specific spending and program expectations. Judicial Council staff will work with the courts to ensure both the council and the courts can meet their legislative requirements outlined in SB 129.

It is expected that non-pilot courts will use the first year of one-time funding (July 1, 2021–June 30, 2022) for implementation of their programs. All pretrial programs will be required to be operational by **June 30, 2022**.

#### **3.1 Program Agreements and Obligations**

It is anticipated that Intra-branch agreements (IBAs) with the courts will *not* be required for the use of this funding for the 2021–22 fiscal year. It is anticipated that courts may be required to execute SB 129 funding IBAs with the Judicial Council in future years.

Judicial Council staff will work with courts to ensure that first-year program reporting requirements are met. In future years, courts may be required to execute IBAs to ensure that more detailed reporting requirements are met. The Judicial Council reserves the right to require a court enter into an agreement at any time it deems it to be necessary.

#### **3.2 Eligible Expenditures**

As outlined by the Legislature, these funds are to be used by the courts (and the county probation department or other county departments with which they contract for services) for pretrial programs and practices, and may be spent on the following:

- (a) Costs associated with judicial officer pretrial release decisions prior to or at arraignment.
- (b) Costs for technology to facilitate information exchange and process automation between courts and county departments.
- (c) Costs for implementation and improvement of court date reminder programs.
- (d) Costs associated with assessments of defendants' ability to pay a financial condition in cases where the court determines that such a condition is necessary to ensure public safety and return to court.
- (e) Costs associated with providing services to and monitoring of individuals released pretrial. The county departments providing pretrial services for the courts are required to implement evidence-based monitoring practices of defendants released prearrest and pretrial with the least restrictive

interventions and practices necessary to enhance public safety and ensure the defendants' return to court.

*(Note: SB 129 restricts funds for electronic monitoring for use in limited cases and only after other less restrictive interventions are deemed insufficient to enhance public safety and to ensure the defendant's return to court. This is discussed in more detail in Section 3.3)*

- (f) Other programs and practices related to pretrial decision-making that address public safety, appearance in court, and the efficient and fair administration of justice.<sup>2</sup>

Courts and their subcontractors can begin to record qualified program expenditures for goods and services purchased on or after July 1, 2021, and retroactively bill these expenses to SB 129 funding.

### **3.3 Least Restrictive Monitoring Interventions**

Courts and county departments may use SB 129 funding for costs associated with providing services to and monitoring of individuals released pretrial, and must implement evidence-based monitoring practices with the least restrictive interventions and practices necessary to enhance public safety and ensure the defendants' return to court.

SB 129 restricts funds for electronic monitoring for use in limited cases and only after other less restrictive interventions are deemed insufficient to enhance public safety and to ensure the defendant's return to court. One evidence-based practice that has been demonstrated to be effective is the use of court date reminders to provide defendants with timely information to facilitate their return to court.

### **3.4 Pretrial Services Providers**

Each court may retain up to 30 percent of the funding for costs associated with pretrial release programs and practices. Courts are required to contract for pretrial services with their county's probation department or any county department other than departments or agencies that have primary responsibility for making arrests or prosecuting criminal offenses,<sup>3</sup> and provide those departments with the remainder of the funds.<sup>4</sup> (Sample

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<sup>2</sup> Sen. Bill 129, § 4, item 0250-101-0001, provision 11.

<sup>3</sup> Senate Bill 129 specifically provides that the Superior Court of Santa Clara County may contract with the Office of Pretrial Services in that county, and that the Superior Court of San Francisco County may contract with the Sheriff's Office and the existing not-for-profit entity that is performing pretrial services in the city and county for pretrial assessment and supervision services.

<sup>4</sup> Sen. Bill 129, § 4, item 0250-101-0001, provision 15.

memorandums of understanding (MOUs) used by several courts in the Pretrial Pilot Program for these contracted services are provided in Attachment B.)

County departments are permitted to subcontract with community-based organizations to provide complementary or supportive services in furtherance of the department's pretrial release services, but only if the following six conditions are satisfied:

- (a) The contractor adheres to the same transparency, accountability, and outcome measure standards that apply to county probation departments.
- (b) The contractor has a proven record of providing culturally competent and responsive rehabilitative services.
- (c) The contract will not result in the displacement of county employees or a reduction in the provision of services by county probation department employees.
- (d) The contractor pays wages and benefits to its non-supervisory employees that are commensurate with or greater than the wages and benefits paid to public employees in similar job classifications.
- (e) The contractor does not pay wages and benefits to its most highly compensated executive and managerial employees that are significantly higher than the rates that would be paid to public employees performing similar job duties.
- (f) The county has consulted with the court prior to entering into a contract for the provision of these services.<sup>5</sup>

### **3.5 Eligible Use of Subordinate Judicial Officers**

As outlined in Section 3.2, funds are to be used by the courts for pretrial programs and practices and may be spent on the “[c]osts associated with judicial officer pretrial release decisions prior to or at arraignment.”<sup>6</sup>

Commissioners may make pretrial release decisions and oversee pretrial programs.<sup>7</sup> A court may use an authorized, vacant subordinate judicial officer (SJO) position, and charge these expenses to the pretrial release funding. A court without an authorized vacant commissioner position may request a temporary commissioner position from the

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<sup>5</sup> Sen. Bill 129, § 4, item 0250-101-0001, provision 14.

<sup>6</sup> *Ibid.*

<sup>7</sup> Under Penal Code section [1269c](#), except where the defendant is charged with an offense listed in section [1270.1\(a\)](#), a defendant, either personally or through his or her attorney, friend, or family member, may apply for release on his or her own recognizance, and the magistrate or commissioner to whom the application is made may authorize the defendant's release on his or her own recognizance.



council's Executive and Planning Committee. Courts can confirm the number of authorized SJO positions in the [Court Statistics Report, Table 14a](#).

The position would be tied to pretrial funding and the commissioner will be required to maintain a grant timesheet (filed with the court) and ensure the commissioner's time is spent on pretrial release duties. A sample timesheet is included in Attachment C. Courts must submit a request with their budget summary by **December 17, 2021**, in order to be considered for the FY 2021–22 year.

If you would like to discuss this possibility, please contact Judicial Council staff at [pretrial@jud.ca.gov](mailto:pretrial@jud.ca.gov).

### **3.6 Use of Risk Assessment Instruments**

Many courts and county agencies in California have adopted pretrial risk assessment tools as part of their pretrial program operations. The use of risk assessment tools is not a requirement of the SB 129 funding; courts are permitted to conduct their pretrial programs with or without the use of these tools. Courts participating in the Pretrial Pilot Program must continue the use of a validated risk assessment tool as set forth under the requirements of the Pretrial Pilot Program, but may discontinue use of a tool after its program end date, as outlined in its contract with the Judicial Council.

Courts considering whether to adopt a pretrial risk assessment tool are encouraged to consult pretrial pilot courts on their experiences with these tools, as well as best practices collected and reported to the Judicial Council by the Pretrial Reform and Operations Workgroup in November 2020.<sup>8</sup>

## **4.0 REPORTING REQUIREMENTS & SUBMISSION PROCESS**

The Judicial Council is responsible for evaluating the pretrial release programs funded in SB 129 on an annual basis. In order to meet these reporting requirements, Council staff will work with courts to collect information on their pretrial programs. The following documents, which are discussed in further detail below, will be requested in FY 2022-23:

- **Budget Summary** – *to be submitted annually, beginning December 17, 2021*
- **Program Description** – *to be submitted by December 17, 2021 (FY 2021-22 only)*
- **Quarterly Progress Report** – *to be submitted quarterly, beginning January 14, 2022*
- **Data Collection Form** – *to be submitted quarterly, beginning January 14, 2022*

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<sup>8</sup> Judicial Council of Cal., *Pretrial Reform and Operations Workgroup Update and Recommendations on Use of Pretrial Risk Assessment Instruments* (Nov. 13, 2020), <https://jcc.legistar.com/View.ashx?M=F&ID=8870018&GUID=AFC468B3-B307-45AC-9AB2-A77DE0A692C9>.

#### **4.1 Budget Tracking**

Staff will track court expenditures using the Phoenix Financial System. In order to assist in this tracking, courts will be required to submit an annual budget detail sheet listing the anticipated expenses of its program. This budget detail sheet is included as Attachment D. In the event a court modifies its budget, the court must report this modification in its next quarterly report, as described in Section 4.3.

Courts will be required to use the following WBS codes on all pretrial release funding:

**O-BA9001 (Pretrial One-Time Funding)**

This WBS code will be used for the funding allocated to the 41 courts that did not receive the initial Pretrial Pilot Funding. This funding will be available for encumbrance or expenditure until **June 30, 2024**.

**O-BA9002 (Pretrial Ongoing Funding)**

A separate WBS code should be used for the funds that will be allocated to all 58 courts. This funding will be available to encumber or expend by **June 30, 2022**.

Unspent/unencumbered funds will revert back to the state General Fund by the listed date. It is incumbent on the court to spend or encumber these funds before the end of each fiscal year. Please refer to the [\*Trial Court Financial Policies and Procedures Manual\*](#) for more information.

#### **4.2 Program Description**

In the first year of the program only, courts will also be asked to include with their budget summary a two-page description of their pretrial programs. This description should include what the court intends to accomplish in FY 2021–22 to align with SB 129’s stated purpose. This fillable document is included as Attachment E.

#### **4.3 Quarterly Progress Reports**

In order to ensure that funds are being spent according to the legislation, Judicial Council staff will ask that courts submit brief quarterly reports that list, among other things, major expenses incurred during that time period. This will also give courts the opportunity to identify and explain any difficulties with respect to spending funds or administering its program, as well as how council staff can best support the courts to resolve these challenges. This quarterly progress report is included as a fillable form in Attachment F.

#### **4.4 Data Collection and Reporting**

Beginning July 1, 2023, the Judicial Council is mandated to provide the Legislature with an annual report evaluating these pretrial programs and practices. To enable the Judicial Council to evaluate the programs, and as a condition of funding, courts and county departments and their contractors are required to collaborate with local justice system partners in reporting quarterly to the Judicial Council on their pretrial programs and practices, including select data elements, as required by the council.

To accomplish this, the council will need to collect select data elements from the court, including information on bookings and type of pretrial release. Although other technical solutions may become available in the future, courts will be asked to self-report these numbers and submit them to council staff using the form provided in Attachment G. The court will need to work with its jail, probation department or other pretrial services provider, and any other justice system partner to gather and verify the data elements in this list. The full list of data elements that will be requested in FY 2021–22 is included as Attachment G.

The data elements listed in Attachment G are subject to change. During the first year of the program, staff will work on further defining the data that needs to be captured in order to evaluate the program. Although IBAs will not be used for the funding in the 2021–22 fiscal year, they may be required in future years in order to facilitate data submission and other logistics of the program.

#### **5.0 JUDICIAL COUNCIL RESOURCES**

SB 129 authorizes the Judicial Council to retain up to five percent of the amount available to the superior courts for costs associated with implementing, supporting, and evaluating pretrial programs in courts, including but not limited to:

- Providing technical assistance to courts on practices and programs related to pretrial decision-making.
- Providing judicial education.
- Evaluating pretrial programs and practices funded through this program.

The Judicial Council’s Criminal Justice Services office will provide support to the superior courts in implementing a pretrial release program that meets SB 129 requirements, including reporting requirements, with a particular focus on courts that have not previously contracted with a county department for pretrial release and monitoring services.

## 5.1 Education and Technical Assistance

The Judicial Council hosted educational events for the pretrial pilot courts and their partners. Many of these sessions have been recorded and are available in Attachment H. The council will continue to leverage the knowledge gained through the pilot program to develop further trainings related to pretrial release. *If there are topics that your court is particularly interested in, please let staff know using [this form](#).*

**Pretrial Release Funding: Overview of Program Guidance Memorandum and Open Q&A**, a webinar to review the details of this document and answer any questions from the court regarding its role in the program, will be hosted by Judicial Council staff on **Monday, November 1, 2021, at noon**. *To register for this webinar, please click [here](#).*

Following the webinar, council staff will hold “office hours” to allow any court and its pretrial services provider an opportunity to discuss its specific implementation issues. *You may request a meeting [here](#).* Judicial Council staff will continue to be available to respond to questions as your court implements its pretrial program.

Council staff are also in the process of gathering several implementation resources used by courts during the pilot program to make available to those starting new pretrial programs.

## 5.2 Master Services Agreements for Pretrial Risk Assessment Applications

In order to assist courts in implementing their pretrial programs, the Judicial Council has entered into master services agreements (MSAs) for pretrial risk assessment application modules. A pretrial risk assessment application (PTRA) is a technology solution that will interface with existing court case management systems, jail management systems, and probation management systems, as well as the Judicial Council’s statewide data repository, the California Department of Justice, and other applicable justice partners.

The Judicial Council, on behalf of the Superior Courts of California, has entered into several leveraged procurement agreements, also referred to as master agreements, with vendors that can license, implement, host, maintain, and service a PTRA. After an extensive application and interview process, three vendors were selected to provide this service. With multiple master agreements awarded, trial courts may select the vendor that best meets the court’s individual needs. More information on these procurement agreements can be found [here](#). For a comparison of the services provided by selected vendors, please contact Judicial Council staff.

If you have any questions regarding SB 129 or the programmatic requirements of the funding, please send an email to [pretrial@jud.ca.gov](mailto:pretrial@jud.ca.gov), and Judicial Council staff will respond as quickly as possible. Council staff have collected frequently asked questions (FAQs) received thus far and provided answers to them in Attachment I.

## **6.0 ACKNOWLEDGEMENT OF RECEIPT**

Courts are asked to acknowledge receipt of this document, and are strongly encouraged to share this document with all contractors used under the program. This Acknowledgement of Receipt is included as Attachment J and should be returned to Council staff via email at [pretrial@jud.ca.gov](mailto:pretrial@jud.ca.gov) by **November 12, 2021**.

## **ATTACHMENTS AND LINKS**

**Attachment A: Approved Funding Allocations**

**Attachment B: Sample Memorandums of Understanding (MOUs)**

**Attachment C: Sample SJO Grant Timesheet**

**Attachment D: Budget Detail Sheets**

**Attachment E: Two-Page Program Description (FY 2021–22)**

**Attachment F: Quarterly Progress Report**

**Attachment G: Data Collection and Reporting Requirements**

**Attachment H: Pretrial Education Resources**

**Attachment I: Frequently Asked Questions (FAQs)**

**Attachment J: Acknowledgement of Receipt**