



## Legislation Text

---

**File #:** 2019-1470, **Version:** 1

---

**To:** Board of Supervisors of Sonoma County  
**Department or Agency Name(s):** Probation Department  
**Staff Name and Phone Number:** David Koch, 565-2732  
**Vote Requirement:** 4/5th  
**Supervisory District(s):** Countywide

**Title:**

10:15 AM - Judicial Council Pretrial Pilot Program

**Recommended Action:**

- A) Authorize the Chief Probation Officer to approve a professional services agreement with the Sonoma County Superior Court for the term August 1, 2019, through June 30, 2021, accepting \$3,012,909, under which the Probation Department will perform evidence-based pretrial risk assessments and monitor arrestees in the community. Services will improve public safety and reduce incarceration costs by assessing all individuals booked into custody and recommending the release of individuals whose assessments indicate low risk for (1) committing criminal activity and (2) failure to appear for court dates. (Majority Vote)
- B) Adopt a Resolution adjusting the FY 19-20 Probation Department budget to increase appropriations and reimbursement in the Adult Division budget by \$1,477,582 to expand the pretrial program using Judicial Council award funding. (4/5<sup>th</sup> Vote Required)
- C) Adopt a Resolution amending the Probation Department allocation list to reflect the addition of eight time-limited allocations, effective October 15, 2019 through June 30, 2021: 2.0 full-time equivalent Probation Officer IV positions; 4.0 full-time equivalent Probation Officer II positions; and 2.0 full-time equivalent Probation Assistant positions. (Majority Vote)

**Executive Summary:**

California's Fiscal Year (FY) 19-20 budget earmarks \$75 million to the Judicial Council to launch and evaluate two-year pretrial projects in local trial courts. As directed by the Legislature, the projects aim to increase the safe and efficient release of arrestees before trial; use the least restrictive monitoring practices possible while protecting public safety and ensuring court appearances; validate and expand the use of risk assessment tools; and assess any disparate impact or bias.

The Judicial Council initiated a competitive process to allocate funds, and the Sonoma County Superior Court, in collaboration with the Probation Department, submitted a proposal. On August 9, 2019, the Judicial Council announced its intention to award \$5,748,000 to expand Sonoma County's current pretrial program. The Superior Court will use approximately 41% of this funding for Court Commissioners, web developers, program analysts, and legal processors, and allocate the other 59% to the Probation Department primarily for probation officers and assistants, along with pass-through funding for the Information Systems Department to implement a new public safety assessment tool. This report requests approval to accept Judicial Council funding via the Superior Court and to increase the Probation Department's FY 19-20 budget and position

allocations accordingly.

## Discussion:

### Bail versus Pretrial

Individuals arrested and charged with a crime may be incarcerated until trial or instead allowed to remain in the community during this time, depending on the Superior Court's decision. Traditionally, courts have based the decision of pre-adjudication (pretrial) release partly on defendants' ability to meet financial burdens of bond or bail, a system that may release dangerous defendants while incarcerating those who pose little risk to their communities. By contrast, under a pretrial services program, release decisions consider defendants' risk of 1) posing a threat to public safety, and 2) failing to appear in court. By using a validated assessment tool to predict these risks, the program protects the public and allows lower-risk defendants-regardless of financial status-to remain in the community while awaiting adjudication. Defendants who cannot be safely supervised in the community remain incarcerated. Table 1 describes additional differences between bail and pretrial systems.

	Bail	Pretrial
<i>How is public safety considered?</i>	To determine bail schedules, courts consider current charges. However, without a pretrial program, there is no validated tool to predict risk. If bail is set, courts release all arrestees who can post bail.	Probation uses a validated tool to assess arrestees, determines their threat to public safety, and informs the courts.
<i>How is risk of failure to appear (FTA) at court dates considered?</i>	The risk of arrestees losing bail funds is assumed to incentivize their making court appearances.	Probation assesses arrestees, determines their probability of failing to appear at court dates, and informs the courts.
<i>Is there a delay in releasing arrestees?</i>	Delays are limited to the time needed to secure bail funds.	Currently, release may be delayed until arraignment. Under the proposed program, there will be almost no delay, as most arrestees will be assessed within one hour of booking and released, if appropriate, shortly thereafter.
<i>What are the safeguards to protect public safety?</i>	Once released on bail, arrestees usually receive no supervision in the community.	Probation monitors arrestees in the community at an intensity level determined by the courts, which receive guidance from risk assessment scores.
<i>How does a defendant's affluence impact decisions?</i>	Those who cannot post bail will remain incarcerated until trial. Alternatively, individuals may hire a bail bond company to post bail, which entails paying high, nonrefundable fees.	Individuals are released from jail regardless of financial status. Individuals will be detained only for posing risks involving public safety or failure to appear at court dates.

Table 1. Comparison of Bail and Pretrial Releases from Custody

### Current Pretrial Program

The Sonoma County Superior Court began using pretrial services, funded by the Community Corrections

Partnership with Public Safety Realignment funding, in January 2015, and the program has grown rapidly, soaring from 689 pretrial grants in calendar year 2015 to 2,119 grants in calendar year 2018. As shown in Table 2, the program has proven largely successful as measured by failures to appear and new criminal referrals.

Pretrial Outcome	# Successful Outcomes	% Total Releases
No Failures to Appear	1,495	85%
No New Criminal Referrals	1,479	84%

**Table 2. Outcomes of Pretrial Release Terminations (Of 1,765 Exits from January through December 2018)**

### **Program Expansion**

Though Sonoma County has demonstrated positive outcomes, opportunities exist to increase reliance on risk-based decision-making and expand the use of pretrial release. With these ambitions in mind, the Sonoma County Superior Court and Probation Department collaborated on a proposal for Judicial Council funding via a competitive \$75 million Pretrial Pilot Program. The proposal proved successful and will provide \$5,748,000 in funding through June 30, 2021. With this funding, Sonoma County seeks to (1) increase use of pretrial release, (2) implement the least restrictive interventions and monitoring practices necessary to ensure public safety and minimize failures to appear, (3) adopt a validated, transparent pretrial risk assessment tool, (4) assess and reduce racial, ethnic, and gender bias in the pretrial system, and (5) build stronger collaboration and data exchange among the justice partners.

The Superior Court and Probation intend to achieve these goals through the following activities:

- Expanding the population eligible for pretrial release by ensuring all individuals booked into custody on new charges receive a pretrial risk assessment. Currently, many individuals booked on warrants do not receive assessments.
- Adopting the nationally recognized Public Safety Assessment tool in lieu of the existing locally developed assessment tool, which is empirically based but has not been scientifically validated. Adopting the validated tool will likely increase the number of individuals safely released back to the community.
- Shifting responsibility for conducting in-custody pretrial risk assessments from the Sheriff's Office to the Probation Department, as required by the Judicial Council award. Additionally, this shift will help Sonoma County prepare for Senate Bill 10, which voters will consider in the November 2020 referendum election. If enacted, this legislation would not allow arresting or detaining agencies to perform assessments.
- Reducing unnecessary incarceration time by expanding the opportunity for pre-arraignment release, **excluding** individuals arrested for serious or violent felonies, non-bailable charges, or non-citable warrants.
- Improving communication and data sharing between the Superior Court and Probation.

- Revising pretrial release policies to ensure that monitoring is no more restrictive than necessary to ensure public safety and attendance at court appearances.
- Implementing a new court date reminder system.

Probation expects that the proposed program will further improve public safety, reduce unnecessary incarceration and associated costs, and prepare Sonoma County for Senate Bill 10. This legislation would effectively eliminate the bond and bail system, replacing it with pretrial assessment and community supervision services consistent with the proposed pilot program. Probation would be responsible for these services, and the legislation provides funding, distributed through the local court to Probation, which would at least partially cover the pretrial pilot-funded services proposed here.

While the proposed program will incorporate validated risk assessment tools into the justice system, it by no means diminishes the Superior Court's capacity to exercise judgment, nor does the program impact law enforcement or the District Attorney's discretion during booking and criminal filing decisions. The tools make evidence-backed recommendations about pretrial release, but judicial officers will continue to make final decisions.

## Conclusion

Adopting the recommended actions will strengthen Probation's ability to provide recommendations to the courts, and will assist Probation in effectively monitoring arrestees whom the courts determine can safely remain in the community pending their next court date.

## Prior Board Actions:

June 14, 2019: The Board approved the Probation Department's Program Change Request to partially fund Sonoma County's pretrial program with Graton Tribal Mitigation funds in FY 19-20.

June 11, 2019: The Board approved the Community Corrections Partnership's FY 19-20 Public Safety Realignment Plan, which includes funding for the Probation Department and Sheriff's Office to operate Sonoma County's pretrial program.

## FISCAL SUMMARY

<b>Expenditures</b>	<b>FY 19-20 Adopted</b>	<b>FY20-21 Projected</b>	<b>FY 21-22 Projected</b>
Budgeted Expenses	\$0	\$1,535,327	\$0
Additional Appropriation Requested	\$1,477,582		
<b>Total Expenditures</b>	<b>\$1,477,582</b>	<b>\$1,535,327</b>	<b>\$0</b>
<b>Funding Sources</b>			
General Fund/WA GF			
State/Federal	\$1,477,582	\$1,535,327	\$0
Fees/Other			

Use of Fund Balance			
Contingencies			
<b>Total Sources</b>	\$1,477,582	\$1,535,327	\$0

**Narrative Explanation of Fiscal Impacts:**

Probation projects that Judicial Council funds will cover all of Sonoma County's program costs relating to the pretrial pilot program in FY 19-20 and 20-21. FY 19-20 costs include \$794,667 for staffing, \$343,449 for ISD costs, \$136,000 for operational services and supplies (training, equipment, etc.), \$88,883 for electronic monitoring, and \$114,583 for leased office space.

The Resolutions accompanying this Summary Report request the addition of 6.0 Probation Officers and 2.0 Probation Assistants, with a budget adjustment of \$1,477,582 in FY 19-20, fully offset by grant revenue, to cover personnel and program implementation expenses. FY 20-21 expenditures and revenues will be incorporated into the budget.

The Judicial Council's award of \$5,748,000 to Sonoma County is approximately 6% less than the \$6,131,108 originally proposed in the application. Probation anticipates that FY 19-20 salary savings due to the time associated with the County's hiring and background process will offset the funding deficiency. Additional savings will result from the time needed to locate and prepare new office space, which the grant also covers. Probation will work closely with the Superior Court and the County Administrator to ensure expenditures do not outpace grant revenue.

Sonoma County's FY 19-20 adopted budget includes \$2.9 million in funding for pretrial services, as follows:

Department	Program/Activity	Approved Expense	Funding Source
Probation	Participant Supervision	\$777,968	Graton Mitigation (one-time revenue)
Probation	Participant Supervision	\$235,886	Community Corrections Partnership
Probation	Electronic Monitoring	\$387,000	Community Corrections Partnership
Probation	Housing and Case Management	\$215,000	Homeless Mentally Ill Outreach and Treatment Program
Probation	Housing and Case Management	\$269,937	Justice and Mental Health Collaboration Program (2018)
Probation	Program Evaluation	\$30,000	Justice and Mental Health Collaboration Program (2018)
Probation	Housing and Program Evaluation	\$48,550	Justice and Mental Health Collaboration Program (2016)
Health Services	Pretrial Clinical Services	\$143,855	Community Corrections Partnership
Sheriff	Risk Assessments*	\$801,650	Community Corrections Partnership
	<b>FY 19-20 Total Pretrial Funding</b>	<b>\$2,909,846</b>	

\* Upon implementation of the program proposed here, Sheriff's Office staff will no longer perform risk assessments.

Due to the one-time nature of Graton Mitigation funding and the two-year term of Judicial Council funding, it is not known whether all program costs will be covered in future years. Senate Bill 10, if passed, will likely

provide substantial funding. Sheriff's Office position costs associated with Pretrial Risk Assessments are fully funded in FY 19-20. As noted below, the timing and plan for full transition of assessments to Probation staff will be developed as the new assessment tool is implemented and evaluated. As information becomes available, the Departments will update the Board and County Administrator's Office.

<b>Staffing Impacts:</b>			
<b>Position Title (Payroll Classification)</b>	<b>Monthly Salary Range (A-I Step)</b>	<b>Additions (Number)</b>	<b>Deletions (Number)</b>
Probation Officer IV	\$7,251.00-\$8,812.86	2.0	0.0
Probation Officer II	\$5,339.55-\$6,490.94	4.0	0.0
Probation Assistant	\$3,744.64-\$4,553.40	2.0	0.0

**Narrative Explanation of Staffing Impacts (If Required):**

8.0 full-time equivalent allocations will be added to augment existing staff in the Sheriff's Office and Probation, as described above and in the attached Position Allocation Resolution. The primary duties and responsibilities of the additional staffing for the Pretrial program fall into two major categories: Intake/Assessment and Monitoring. Intake/assessment primarily involves conducting pretrial risk assessments, identifying treatment needs, and preparing judicial reports on both in custody and out of custody defendants. Monitoring involves providing the appropriate level of supervision in the community to ensure compliance with pretrial release conditions. This monitoring may include chemical testing, electronic monitoring, referrals to treatment providers and other activities to support a client's successful compliance with conditions. During the 2018 calendar year, 5,031 assessments were conducted and 2,119 individuals were granted pretrial release. These numbers are expected to rise under this pilot program, as more arrestees will be eligible for pretrial release. Sheriff's detention staff currently assigned to perform risk assessments at booking will ultimately transfer to other assignments appropriate for their respective Job Classes. The timing and plan for full transition will be developed as the new assessment tool is implemented and evaluated. The Probation Department and Sheriff's Office will work closely with Human Resources to ensure all internal processes and collective bargaining obligations are satisfied prior to hiring individuals into these allocations.

**Attachments:**

- Pretrial Pilot Program Budget Resolution
- Pretrial Pilot Program Position Resolution

**Related Items "On File" with the Clerk of the Board:**

Pretrial Data Monthly report -- July 2019

Professional Services Agreement with Sonoma County Superior Court