May 1, 2017

Honorable Jeffrey B. Barton
Presiding Judge, Superior Court of California, County of San Diego
P.O. Box 122724
San Diego, CA 92112-2724

Honorable Kimberly A. Gaab
Presiding Judge, Superior Court of California, County of Fresno
1100 Van Ness Avenue
Fresno, CA 93724-0002

Honorable Kelly V. Simmons
Presiding Judge, Superior Court of California, County of Marin
P.O. Box 4988
San Rafael, CA 94913

Dear Presiding Judges Barton, Gaab, and Simmons:

We are writing to advise you that your three courts have been selected by our committee to participate in the AB 2013 (Penal Code section 991.5) Pilot Program ("AB 2013").

As mentioned by Judge Pines in his March 1, 2017 letter to each of the eligible courts, the members of our committee are Sean Hoffman, selected by the California District Attorneys Association; Leslie McMillan, selected by the California Public Defenders Association; and retired Judge Burt Pines, selected by the Judicial Council.

Assembly Bill 2013 (Chapter 689, Statutes of 2016) requires that three counties "be selected to participate in a three-year pilot project that would require a court, upon request by the defendant in the case of a defendant charged with a misdemeanor who is not in custody, to make a finding at the arraignment as to whether probable cause exists to believe that a public offense has been committed and that the defendant is guilty thereof."

AB 2013 required our committee to select one small county, one medium county, and one large county (as defined in AB 2013) to participate in the program. Each of your counties meets the population requirements for a small county (Marin), medium county (Fresno), and large county (San Diego).

In making this selection, our committee has consulted with relevant public officials in each of the eligible counties and considered the information provided in your court's response to Judge Pines' letter as well as the responses provided by each of the other eligible courts.

This has not been an easy decision. We fully considered the financial hardships your court and other courts are currently facing and the additional burdens this program would place on your already strapped resources. Among the other factors we considered are the respective caseloads...
in each of the courts under consideration, the number of arraignment courtrooms, the staffing of the arraignment courts by prosecutors and public defenders, the local filing practices, the number of prosecuting agencies, the court's willingness to undertake the program, the views of local prosecutors and public defenders, and the court's data collection capabilities.

We appreciate your court's willingness to undertake this program in the face of the staffing and record-keeping challenges presented. You should also know that we endeavored to reach a decision as soon as we were able to do so to allow your court and your justice partners as much lead-time as possible to begin the program on July 1st.

As you are aware, the Department of Justice (“DOJ”) bears the ultimate responsibility under AB 2013 of providing information to various legislative bodies "regarding the implementation of this section, including, but not limited to, the number of instances that a prompt probable cause determination made to an Out of Custody defendant facing a misdemeanor charge resulted in the defendant's early dismissal."

We have been in touch with DOJ representatives during the course of our deliberations and understand that they are prepared to work with all participants in collecting the required information. By copy of this letter, we are advising DOJ and other interested parties of our committee’s decision pursuant to AB 2013.

We thank you for your assistance and cooperation.

Sincerely yours,

Sean Hoffman
Director of Legislation, CDAA

Leslie McMillan
Retired Public Defender

Burt Pines
Retired Superior Court Judge

Cc:   Honorable Edmund G. Brown, Jr., Governor, State of California
Honorable Xavier Becerra, Attorney General, State of California
Honorable Alex Padilla, Secretary of State, State of California
Honorable Tani G. Cantil-Sakauye, Chief Justice, California Supreme Court
Honorable Douglas Miller, Associate Justice, Court of Appeal, Fourth Appellate District
Honorable Nancy Skinner, Chair, Senate Committee on Public Safety
Honorable Reginald Jones-Sawyer, Chair, Assembly Committee on Public Safety
Honorable Bonnie Dumanis, District Attorney, County of San Diego
Honorable Lisa A. Smittcamp, District Attorney, County of Fresno
Honorable Edward S. Berberian, Jr., District Attorney, County of Marin
Honorable Mara Elliott, City Attorney, City of San Diego
Randy Mize, Public Defender, County of San Diego
Elizabeth Diaz, Public Defender, County of Fresno
Jose H. Varela, Public Defender, County of Marin
Honorable Stephen M. Wagstaffe, President, California District Attorneys Association
Mark Zahner, Chief Executive Officer, California District Attorneys Association
Charles Denton, President, California Public Defenders Association
Michael Cantrall, Executive Director, California Public Defenders Association
Daniel Seeman, Deputy Legislative Secretary, Office of the Governor
Gerald Engler, Chief Assistant Attorney General
Joe Dominic, Director, California Justice Information Services Division
Bill Mabie, Chief Deputy Secretary of State
Martin Hoshino, Administrative Director, Judicial Council