

DATA USE AGREEMENT
Between THE COUNTY OF FRESNO
and
The REGENTS OF THE UNIVERSITY OF CALIFORNIA,
on behalf of THE CALIFORNIA POLICY LAB,
REGARDING RESEARCH AND DATA USE

This Data Use Agreement (“Agreement”) is between the County of Fresno (hereinafter referred to as “Data Owner”), and The Regents of the University of California (“UC Regents”), acting on behalf of the California Policy Lab at its UCLA and UC Berkeley campuses (“CPL”), each individually referred to as a “Party”, and collectively as the “Parties”.

I. PURPOSE

- a. CPL, operating out of the University of California Berkeley and Los Angeles campuses, aims to improve outcomes for Californians who utilize public services by building lasting research partnerships with state and local governments, and is committed to the mission of research, education, and public service on a wide range of issues including poverty, education, social programs, health, employment, and criminal justice; and
- b. Data Owner operates through certain departments as a public criminal justice agency committed to the public good, which desires to better understand the characteristics of the criminal justice population and how they change over time, as well as to improve the targeting and efficacy of interventions designed to improve outcomes; and
- c. The purpose of this Agreement is to set out the terms and conditions agreed to by the Parties regarding the provision of Data, as defined under Section III.a of this Agreement, from Data Owner to CPL for research. No Data shall be provided by Data Owner to CPL until the execution of a “Research Project Description”, which is attached as Exhibit A. Each Research Project Description describes the Data to be provided by the Data Owner to CPL and the Research, as defined in Exhibit A, for which that Data shall be used; and
- d. Research planned by CPL that involves generalizable research on human subjects shall be submitted in advance to an Institutional Review Board (“IRB”) for IRB review and approval, if applicable to the Research.

II. TERM OF AGREEMENT

- a. This Agreement shall be effective upon execution by all Parties (“Effective Date”) and shall continue for a period of three (3) years, unless terminated by either Party pursuant to Section VII.
- b. The term of this Agreement may be extended for no more than two, one-year periods only upon written approval of both parties at least 30 days before the first day of the next one-year extension period. The Chief of Probation or his or her designee is authorized to sign the written approval on behalf of the County based on the CPL satisfactory performance. The extension of this Agreement by the County is not a waiver or compromise of any default or breach of this Agreement by the CPL existing at the time of the extension whether or not known to the County.

III. DESCRIPTION OF DATA

- a. “Data” means the information to be provided by Data Owner to CPL that is described in each Research Project Description(s) (“Data”). Data to be provided in CSV or Excel XLSX file format.

IV. DATA SECURITY, CONFIDENTIALITY, AND DATA ACCESS

- a. Data Owner shall transfer Data to CPL in a secure manner, such as secure file transfer protocol, an encrypted cloud-based solution, or an encrypted hard drive.
- b. Data shall be stored on CPL’s secure data infrastructure. Data shall not be copied to other computers, and shall not physically leave the CPL data infrastructure. Data shall be analyzed on CPL’s data infrastructure only, using thin clients on authorized remote machines. The CPL data infrastructure shall be kept in a locked room with two-factor authentication, in a building that is monitored 24 hours per day, with guard response.
- c. CPL shall comply, at a minimum, with recommended UC security standards for electronic information and networked devices. Further information about CPL’s data security protocols are available upon request.
- d. With the permission of Data Owner, CPL may provide access to Data to Faculty, employees, research staff, and affiliated graduate students at other University of California campuses (“Other UC Campus” or “Other UC Campuses”) or third parties, including faculty, employees, research staff, and affiliated graduate students at other academic research institutes or research organizations (“Third Party” or “Third Parties”). Any such access to Data will be described in and governed by a Research Project Description and the applicable terms of this Agreement, and shall comply with all applicable laws. In the event

Data Owner grants permission to CPL to provide access to Data to a Third Party, Third Party will be required to accept the same obligations reflected in Sections V, VI, and VIII.a-d, and f-k of this Agreement. Third Party's acceptance of those obligations, as well as any other provisions pertaining to Third Party's relationship with CPL, will be attached as Exhibit A to this Agreement.

- e. CPL shall strictly limit the number of individuals who have access to the Data to those necessary: (1) to accomplish the Research described in each Research Project Description; (2) to complete mutually agreeable projects that Data Owner requests in writing; or (3) for administrative purposes related to data security ("Authorized Users").
- f. CPL shall assign each Authorized User a unique user name and password which must be entered in order to access the Data. CPL shall maintain a log establishing an audit trail of who has accessed the Data.
- g. CPL shall be responsible for ensuring compliance with all data security and confidentiality protocols described in this Agreement.
- h. CPL shall instruct all Authorized Users about the requirements for handling any Data, and about the potential sanctions for unauthorized disclosure or use of this Data. CPL shall ensure that all Authorized Users have been informed of the procedures they must follow to maintain the confidentiality of the Data and that unauthorized dissemination or use of the Data may be a crime and could lead to civil and criminal penalties. CPL shall report to Data Owner any unauthorized use or disclosure of the Data of which it becomes aware.
- i. The Parties acknowledge that various federal and state laws protect Data Owner's Data from unauthorized disclosure, and it is the Parties' intent to ensure that the provision and use of such Data between the Parties is done in compliance with those laws.

V. USE OF DATA

- a. CPL shall not access and use the Data except: (1) to accomplish the Research described in each Research Project Description; (2) to complete mutually agreeable projects that Data Owner requests in writing; or (3) for administrative purposes related to data security.
- b. In the event the Data provided by Data Owner contains data elements that directly identify an individual ("Direct Identifiers"), in compliance with Penal Code § 13202, CPL shall not use the Direct Identifiers to match or link with any other data, except as expressly specified in any Research Project Description(s) or as requested in writing by Data Owner and as is mutually agreeable.

VI. PUBLICATIONS AND REPORTS

- a. CPL shall be free to distribute and publish research results and other products of its research in works such as academic journals, books, online publications, unpublished working papers, and reports, materials and information included in presentations for academic seminars and conferences derived from, based on or using the Data (“Publications”), but only after Data Owner has had an opportunity to review and comment as described in this Section of this Agreement.
- b. CPL shall recognize the contribution of the Data Owner in all written or oral public disclosures concerning CPL’s research using the Data, as appropriate in accordance with scholarly standards. Such recognition shall also include a disclaimer to the effect that published material does not necessarily reflect the views of Data Owner.
- c. CPL shall only include aggregate level data in any Publications based on the Data provided by Data Owner. No research results shall be reported in a manner that permits direct or indirect identification of any individual. CPL shall not put in any Publication information describing a group of persons numbering fewer than five (5). This minimum cell size is intended to maintain the confidentiality of potentially re-identifiable subgroups.
- d. CPL shall submit to Data Owner for review and comment any Publications intended for publication, release, and/or dissemination, and Data Owner shall keep such proposed Publication confidential for a period of one (1) year or until the Publication is released publicly, whichever date is earlier. Data Owner shall have thirty (30) days for its review of the Publication to ensure that no Data is released that permits direct or indirect identification of any individual. Data Owner will make every effort to work with CPL to resolve outstanding questions. If CPL cannot resolve Data Owner’s concerns, to Data Owner’s satisfaction, that a Publication does permit direct or indirect identification of an individual, then CPL agrees that it will remove the Data at issue from the Publication. CPL shall interpret the absence of feedback from Data Owner within that thirty (30) day period that no Data has been identified in the Publication that may permit direct or indirect identification of any individual and the publication may be published, released and/or disseminated as originally written.

VII. TERMINATION OF AGREEMENT

- a. This Agreement shall expire as of the date described in Section II, unless extended by agreement of the Parties or terminated earlier under this Section VII. Either Party may terminate this Agreement for any reason upon sixty (60) days prior written notice to the other Party.
- b. Upon termination or expiration (subject to Section II) of this Agreement, Data Owner shall instruct CPL in writing to either retain, return, or destroy the Data to Data Owner. CPL shall comply within sixty (60) days from the date of

notification, provided, however, that CPL may retain one (1) copy of the Data to the extent necessary to comply with the records retention requirements under any law or regulation and for the purposes of research integrity and verification.

VIII. GENERAL TERMS

- a. NO REPRESENTATIONS AND WARRANTIES. DATA OWNER WARRANTS THAT IT HAS THE RIGHT TO DISCLOSE THE DATA TO CPL. ALL DATA ARE PROVIDED “AS IS.” EXCEPT AS PROVIDED IN THE FIRST SENTENCE OF THIS PARAGRAPH, DATA OWNER MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, REGARDING THE DATA’S ACCURACY, COMPLETENESS OR USE. THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE USE OF THE DATA WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER PROPRIETARY RIGHTS. THE UC REGENTS MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND CONCERNING THE RESEARCH AND PUBLICATIONS AND DISCLAIM ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.
- b. USE OF NAME. Except as expressly provided in this Agreement, neither Party shall use or register the other Party’s name (alone or as part of another name) or any logos, seals, insignia or other words, names, symbols or devices that identify the other Party, including any school, unit, division or affiliate (“Names”) in any advertisement, or publicity with reference to this Agreement or any product or service resulting from this Agreement, without the prior written approval of, and in accordance with restrictions required by, an authorized representative of the Party whose name who is to be used. The foregoing notwithstanding, the Parties agree that each Party may respond to legitimate business inquiries with factual information regarding the existence and purpose of the relationship that is the subject of this Agreement, without written permission from the other Party. In addition, this Section VIII(b) does not apply to or limit a Party’s responsibility to comply with the California Public Records Act request, pursuant to Government Code § 7920 et. seq., or the Ralph M. Brown Act, pursuant to Government Code 54950 et. seq. Without limiting the foregoing, each Party shall cease all use of Names of the other Party permitted under this Agreement on the termination or expiration of this Agreement except as otherwise approved by the other Party.
- c. LIMITATION OF LIABILITY. WITH THE EXCLUSION OF THE INDEMNIFICATION PROVISIONS CONTAINED IN SECTION IX OF THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, PUNITIVE, CONSEQUENTIAL, OR SPECIAL DAMAGES, INCLUDING LOST REVENUES OR PROFITS, ARISING FROM

BREACH OF THE TERMS IN THIS AGREEMENT, NEGLIGENCE, STRICT LIABILITY OR OTHER TORT, OR ANY OTHER CAUSE.

- d. GOVERNING LAW & LANGUAGE. This Agreement shall be governed by, and construed in accordance with, the substantive laws of the State of California, without giving effect to any choice or conflict of law provision. Any action, suit or other proceeding arising under or relating to this Agreement (a “Suit”) shall be brought in a court of competent jurisdiction in the State of California.
- e. NOTICES. Any communication under this Agreement, excluding transmission of Data, may be delivered in person, by electronic mail, by registered or certified mail, postage prepaid, or by recognized delivery service, to the appropriate addresses listed here:

To Data Owner:

Chief Probation Officer
County of Fresno
3333 E. American Avenue, Building 701,
Suite B
Fresno, CA 93725

To CPL:

Evan White
California Policy Lab
University of California, Berkeley
2521 Channing Way, Room 212
Berkeley, CA 94720
Voice: (510) 642-3875
evanbwhite@berkeley.edu

To UC Berkeley:

Kathryn Lewis
Industry Alliances Office
University of California at Berkeley
2150 Shattuck Ave., 10th Floor
Berkeley, CA 94704-6701
Voice: (510) 643-5997
IAO@berkeley.edu

To UCLA:

Kathy Wrobel
Industry Research and Material Transfer
Officer
UCLA Technology Development Group
10889 Wilshire Blvd, Suite 920
Los Angeles, CA 90095-7191
Voice: (310) 794-0401
kwrobel@tdg.ucla.edu

Any Notice of Termination must be sent by U.S. mail in addition to any other method of transmission. For all claims arising out of or related to this Agreement, nothing in this section establishes, waives, or modifies any claims presentation requirements or procedures provided by law, including but not limited to the Government Claims Act (Division 3.6 of Title 1 of the Government Code, beginning with section 810).

- f. **INDEPENDENT CONTRACTOR.** The Parties are independent contractors and neither Party shall be deemed to be an agent or employee of the other Party. Neither Party shall have authority to make any statements, representations or commitments of any kind on behalf of the other Party, or to take any action which shall be binding on the other Party.
- g. **ASSIGNMENT.** This Agreement and all rights and obligations hereunder shall not be assigned (whether through merger or consolidation, by operation of law, or otherwise), without the written consent of the other Party and any attempt to assign without such consent shall be void.
- h. **MODIFICATION.** No modification or waiver of any provision of this Agreement shall be valid unless in writing and executed by duly-authorized representatives of both Parties. A failure by one of the Parties to this Agreement to assert its rights hereunder shall not be deemed a waiver of such rights. No such failure or waiver in writing by any one of the Parties hereto with respect to any rights shall extend to or affect any subsequent breach or impair any right consequent thereon. Any modification to the research project description must be requested in writing and approved in writing by the Chief of Probation.
- i. **SEVERABILITY.** If any provision of this Agreement is or becomes invalid or is ruled invalid by any court of competent jurisdiction or is deemed unenforceable, it is the intention of the Parties that the remainder of this Agreement shall not be affected.
- j. **COUNTERPARTS.** This Agreement may be executed in two or more counterparts, and by facsimile or electronic transmission, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.
- k. **ENTIRE AGREEMENT.** Unless otherwise specified, this Agreement and any exhibits attached hereto embody the entire understanding between Data Owner and CPL for the purpose, and any prior or contemporaneous representations, either oral or written, are hereby superseded.

IX. INDEMNITY and DEFENSE

a. **Indemnity.**

To the extent legally able to, CPL shall defend, indemnify and hold Data Owner, its officers, employees and agents harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of CPL, its officers, agents or employees.

To the extent legally able to, Data Owner shall defend, indemnify and hold CPL, its officers, employees and agents harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of Data Owner, its officers, agents or employees.

Each Party may conduct or participate in its own defense without affecting the other party's obligation to indemnify and hold harmless or defend the that party.

X. INSURANCE REQUIREMENTS

- a. **Professional Liability.** Professional liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence and an annual aggregate of Three Million Dollars (\$3,000,000). If this is a claims-made policy, then (1) the retroactive date must be prior to the date on which services began under this Agreement; (2) CPL shall maintain the policy and provide to the Data Owner annual evidence of insurance for not less than five years after completion of services under this Agreement; and (3) if the policy is canceled or not renewed, and not replaced with another claims-made policy with a retroactive date prior to the date on which services begin under this Agreement, then CPL shall purchase extended reporting coverage on its claims-made policy for a minimum of five years after completion of services under this Agreement.
- b. **Cyber Liability.** Cyber liability insurance with limits of not less than Two Million Dollars (\$2,000,000) per occurrence. Coverage must include claims involving Cyber Risks. The cyber liability policy must be endorsed to cover the full replacement value of damage to, alteration of, loss of, or destruction of intangible property (including but not limited to information or data) that is in the care, custody, or control of CPL.

Definition of Cyber Risks. "Cyber Risks" include but are not limited to (i) Security Breach, which may include Disclosure of Personal Information to an Unauthorized Third Party; (ii) data breach; (iii) breach of any of CPL's obligations under [identify the Article, section, or exhibit containing data security obligations] of this Agreement; (iv) system failure; (v) data recovery; (vi) failure to timely disclose data breach or Security Breach; (vii) failure to comply with privacy policy; (viii) payment card liabilities and costs; (ix) infringement of intellectual property, including but not limited to infringement of copyright, trademark, and trade dress; (x) invasion of privacy, including release of private information; (xi) information theft; (xii) damage to or destruction or alteration of electronic information; (xiii) cyber extortion; (xiv) extortion related to CPL's

obligations under this Agreement regarding electronic information, including Personal Information; (xv) fraudulent instruction; (xvi) funds transfer fraud; (xvii) telephone fraud; (xviii) network security; (xix) data breach response costs, including Security Breach response costs; (xx) regulatory fines and penalties related to CPL's obligations under this Agreement regarding electronic information, including Personal Information; and (xxi) credit monitoring expenses.

XI. ELECTRONIC SIGNATURES.

The parties agree that this Agreement may be executed by electronic signature as provided in this section.

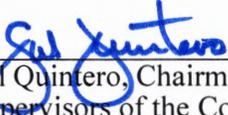
- a. An "electronic signature" means any symbol or process intended by an individual signing this Agreement to represent their signature, including but not limited to (1) a digital signature; (2) a faxed version of an original handwritten signature; or (3) an electronically scanned and transmitted (for example by PDF document) version of an original handwritten signature.
- b. Each electronic signature affixed or attached to this Agreement (1) is deemed equivalent to a valid original handwritten signature of the person signing this Agreement for all purposes, including but not limited to evidentiary proof in any administrative or judicial proceeding, and (2) has the same force and effect as the valid original handwritten signature of that person.
- c. The provisions of this section satisfy the requirements of Civil Code section 1633.5, subdivision (b), in the Uniform Electronic Transaction Act (Civil Code, Division 3, Part 2, Title 2.5, beginning with section 1633.1).
- d. Each party using a digital signature represents that it has undertaken and satisfied the requirements of Government Code section 16.5, subdivision (a), paragraphs (1) through (5), and agrees that each other party may rely upon that representation.
- e. This Agreement is not conditioned upon the parties conducting the transactions under it by electronic means and either party may sign this Agreement with an original handwritten signature.

XII. SIGNATURES

The Parties have executed this Agreement by and through their duly authorized representatives.

Data Owner

COUNTY OF FRESNO

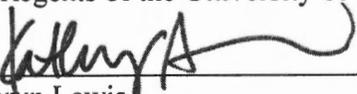


Sal Quintero, Chairman of the Board of
Supervisors of the County of Fresno

Attest:
Bernice E. Seidel
Clerk of the Board of Supervisors
County of Fresno, State of California

By: 

Deputy

The Regents of the University of California
By: 

Kathryn Lewis
Associate Director, Industry Alliance Office
UC Berkeley

Date: February 24, 2023

Exhibit A- Research Project Description

This Research Project Description is issued under the Data Use Agreement (the “Agreement”) between Data Owner and The Regents of the University of California, on behalf of the California Policy Lab at its UCLA and UC Berkeley campuses (“CPL”), with an effective date of _____.

Together with the Agreement, this Research Project Description governs the conduct of the research contemplated herein.

1. Project Title: **How is California’s Policy Decision to Reduce Probation Supervision Terms Affecting Criminal Justice Outcomes?**
2. Year-Number (e.g., 2017-3): 2023-1
3. Description of the research (“Research”): This study is designed to evaluate the impacts of AB 1950 on probation departments and the criminal justice outcomes of individuals under probation supervision. To do so, we will partner with counties throughout the state to conduct five qualitative interviews with probation staff and two focus groups with individuals under probation supervision. We will assist partner counties in providing individual-level probation and jail data, which will be linked to statewide arrest and conviction history data from the Department of Justice.

Drawing on these data, we will use a pre-post design to examine how AB 1950 impacted probation population sizes and caseloads, as well as program participation and case management practices within probation departments (where feasible). We will also draw on these data to assess the effects of AB 1950 on the completion of probation terms and recidivism outcomes. Finally, we will draw on the DOJ data to investigate whether sentencing trends shifted away from probation and toward incarceration-based sentences in response AB 1950.

The research team will produce a California Policy Lab report summarizing findings from these analyses with the statewide audience in mind. Partner counties will have at least 30 days to review the report in advance of the release. The authors may also subsequently submit the findings to an academic publication.

4. Description of data to be provided (“Data”): Partner counties will provide individual-level data capturing their probation and jail populations from 2015 through 2023. We will use earlier time periods to placebo test our findings.
5. Individual(s) authorized to access the Data, and their corresponding UC campus or other research organization affiliation (“Authorized Users”):

Dr. Mia Bird, University of California, Berkeley

For purposes of project completion, access to the data may also include any research staff or graduate students under the direct supervision of Dr. Bird.

6. OPTIONAL: List any additional compliance, research use, or data security requirements beyond those specified in the Agreement that apply to this specific Data:
7. In the event the Data provided by Data Owner contains data elements that directly identify an individual ("Direct Identifiers"), can the Direct Identifiers be used to link with other datasets? X Yes ___ No

If yes, restrictions on how the Data can be linked: Identifiers will be used to initially link data across criminal justice agencies to build base population files. Identifiers will be removed from research files.

8. Upon completion or termination of this project, Data shall be:

Retained by CPL _____ Returned to Data Owner X Destroyed _____

IN WITNESS WHEREOF the Parties hereto have caused this agreement to be executed by their duly authorized representatives:

The Regents of the University of California

Signature 
Kathryn Lewis
Associate Director, Industry Alliance Office
UC Berkeley

Date: January 27, 2023

[Data Owner]
Signature 

Date: 3/7/2023

Chief Probation Officer
County of Fresno

[Additional Signatory, as applicable]

Signature _____
[authorized official]

Date: _____

Read and Understood By:

Signature *Mia Bird*
Mia Bird
UC Berkeley

Date: January 27, 2023