

**COUNTY OF SACRAMENTO  
CALIFORNIA**

For the Agenda of:  
May 9, 2023

To: Board of Supervisors

Through: Ann Edwards, County Executive

Eric Jones, Deputy County Executive  
Public Safety and Justice

From: Thien Ho, District Attorney

Subject: Approve Award Of Contract Agreement To Sicuro Data Analytics, LLC And Authorization To Execute Contract Agreement Between The County Of Sacramento, District Attorney's Office And Sicuro Data Analytics, LLC, From May 9, 2023 Through May 9, 2026

District(s): All

**RECOMMENDED ACTION**

1. Approve Award of Contract Agreement to Sicuro Data Analytics for statistical analysis of criminal charging and outcomes, as outlined in the Racial Justice Act.
2. Authorize the District Attorney or designee to execute the contract for the term of May 9, 2023 through May 9, 2026 in the amount of \$600,000, to amend the contract, make monetary adjustments, terminate if deemed necessary by the Purchasing Agent and take other necessary actions to uphold the contract.

**BACKGROUND**

In recent years, the measure of fairness and equity within the California criminal justice system has changed from qualitative evaluations of individual cases to an assessment focused heavily on quantitative analysis and aggregates statistics. Groups working to reform the criminal justice system frequently rely on targeted statistics to support certain conclusions about the administration of justice. However, raw statistics can be misleading. Even the most well-intentioned evaluations can be inaccurate if they are only based on a subset of available data.

It is against this backdrop that Assembly Bill 2542 (2020), or the Racial Justice Act (now codified as Penal Code section 745), was enacted. Penal Code section 745 provides remedies to defendants who allege disparate treatment based on race, ethnicity, or national origin. To establish whether disparate treatment has been established, either party can present evidence including, but not limited to, statistical evidence or aggregate data. Such evidence can be used to establish whether there are significant differences in charges or convictions when comparing individuals who have engaged in "similar conduct" and are "similarly situated," and where the prosecution cannot establish race-neutral reasons for the disparity. (See Pen. C. § 745 (h)(1).)

Specifically, a defendant can demonstrate that the Racial Justice Act was violated by proving any of the following:

The defendant was charged or convicted of a more serious offense than defendants of other races, ethnicities, or national origins who have engaged in similar conduct and are similarly situated, and the evidence establishes that the prosecution more frequently sought or obtained convictions for more serious offense against people who share the defendant's race, ethnicity, or national origin in the county where the convictions were sought or obtained.

A longer or more severe sentence was imposed on the defendant than was imposed on other similarly situated individuals convicted of the same offense, and longer or more severe sentences were more frequently imposed for that offense on people that share the defendant's race, ethnicity, or national origin than on defendants of other races, ethnicities, or national origins in the county where the sentence was imposed.

A longer or more severe sentence was imposed on the defendant than was imposed on other similarly situated individuals convicted of the same offense, and longer or more severe sentences were more frequently imposed for the same offense on defendants in cases with victims of one race, ethnicity, or national origin than in cases with victims of other races, ethnicities, or national origins, in the county where the sentence was imposed.

(Pen. C. §§ 745 (a)(3), (a)(4)(A), and (a)(4)(B) (as amended by AB 256 (2022).)

Subsection (c)(1) states that if a hearing is conducted, evidence may be presented by either party, including, but not limited to, statistical evidence, aggregate data, expert testimony, and the sworn testimony of witnesses. For the purpose of a motion and hearing under this section, out-of-court statements that the court finds trustworthy and reliable, statistical evidence, and aggregated data are admissible for the limited purpose of determining whether a violation has occurred.

As a result, it is incumbent upon prosecutors to ensure that the data relied upon in this process compares "similar offenses" and individuals who are "similarly situated." These critical components are typically the most difficult for district attorney's offices to measure. Significant and specialized experience in conducting complicated empirical analyses of raw computer data is necessary.

Sicuro Data Analytics has that experience. Sicuro Data Analytics is comprised of a team of experts that specialize in complex data retrieval and analysis. Since the passage of Penal Code section 745, Sicuro Data Analytics has been working with several district attorney's offices in California to assist in the complex analysis that is needed to ensure prosecutorial fairness.

Sicuro Data Analytics would perform the following work for the DA's Office:

First, the team would conduct a statistical analysis of criminal charging and outcomes, as outlined in the Racial Justice Act, for the DA's Office in three (3) phases. Phase 1 of the Racial Justice Act analysis will involve the ingestion of data from the DA's Office. Sicuro Data Analytics would determine any key missing components in the existing data files that have been provided and work with the DA's Office to identify additional, internal databases that could contain the missing data features as well as external locations where missing data are maintained (e.g., court databases). Phase 2 would involve devising a plan for backfilling the content that is missing as well as that which is incorrectly included. Phase 3 would consist of the process of conducting the empirical analysis of the Racial Justice Act.

The first step in conducting the empirical analysis will involve conducting an average outcomes analysis. This analysis will identify defendants of different races, but otherwise identical, to determine whether disparities exist in charging practices and case outcomes. In the second step of the empirical analysis, Sicuro Data Analytics will leverage as-if randomly assigned cases to deputy district attorneys to leverage randomness in case assignment and differences in prosecutor charging practices. This can identify the impact of

harsher or more lenient charging practices on case outcomes and determine whether statistical differences in charging practices are observed for the marginal defendant, as opposed to the average defendant. In the third step of the empirical analysis, an outlier analysis will be conducted at both the case and deputy district attorney level. This can identify instances where specific cases or specific deputy district attorney charging practices within a type of crime significantly and materially differ from the norm within the office.

Sicuro Data Analytics' services will include the option for production of a 90-120 second video storyboard to produce a simple, easy-to-understand video that explains the results of the Racial Justice Act analysis.

In addition to the data elements that have been verified and backfilled for the Racial Justice Act analysis, remaining data elements will also be collected that are necessary to fulfill the future requirements of Assembly Bill 2418 (2022). Under this law, prosecution offices will be required, starting in 2027, to collect and transmit various data elements to the Department of Justice, such as custodial status and plea offers. Other data elements that the DA's Office deems critical to maintain in their case management system will also be collected.

Sicuro Data Analytics' services will also include, upon completion of the data verification and backfilling process, the production of an interactive map of Sacramento County that could be made available to the public. The map would include numerous "layers" that are broken apart by geographic units (e.g., census tracts), which contain information about each geographic unit. The specific layers would be subject to later finalization but could include such information as racial compositions and types of crimes per geographic unit.

Furthermore, two dashboards may be produced that utilize the verified and backfilled analytical data set. For example, one dashboard could be for internal deliberative use, such as maintaining a balance of cases handled by each division or monitoring charging rates. The other dashboard could be designed to be shared with criminal justice partners and could include various general information, without identifying individuals, such as aggregated counts of cases that are referred to the DA's Office, filed charges broken apart by crime types, and disposition of cases.

The DA's Office has an immediate need to make aggregate data reasonably accessible for discovery in response to Penal Code section 745 litigation. In addition to responding to case-specific needs, utilizing Sicuro Data Analytics will enable the DA's Office to better evaluate our own performance. This will

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ensure the community, based upon verifiable information, that the DA's Office exercises equitable and fair treatment within our prosecutorial decision-making process, thereby enhancing the public's trust in the criminal justice system.

### **71-J Analysis**

This contract agreement is not subject to 71-J because county employees have not performed or currently perform these duties.

### **FINANCIAL ANALYSIS**

This contract will be funded by existing appropriations in the Services and Supplies accounts within the DA's Budget. There will be no additional net cost to the County.

Attachment(s):

RES – Resolution

ATT 1 – Contract Agreement with Sicuro Data Analytics, LLC