Template

**Generic RJD DA MOU**

**Memorandum of Understanding:**

**Restorative Justice Diversion Agreement**

**THIS MEMORANDUM OF UNDERSTANDING** (“MOU”) is by and between the following: **[Insert name and title of District Attorney who has authority to make a binding agreement for the juvenile division]** and **[Insert participating agencies/organizations.]** For purposes of this document, all participating organizations that will receive cases from the District Attorney’s Office (“DAO”) and any other referring agencies will be referred to as community-based organizations (“CBO(s)”).

Introduction and Definitions

The intention of this collaboration is to replace the charging and prosecution of youth who are arrested for felonies and high-level misdemeanors with Restorative Justice Diversion (RJD). RJD helps youth understand the impacts of their actions and what accountability for those impacts entails. RJD processes create a space to listen and respond to the needs of the survivor, the person who harmed, and their communities; to encourage accountability through personal reflection and collaborative planning; to integrate the youth who harmed into the community as valuable and contributing members; to empower families and/or caregivers to address youthful wrongdoing; and to create caring climates that support healthy families and communities. Because this is a pre-charge model, when the RJD process is completed, charges are never filed.

This MOU also sets forth expectations upon the following participating organizations and agencies: **[Insert all agencies and organizations signing this document]**. This MOU will become effective upon the approval of the DAO and the participating CBO(s).

Throughout this document, the terms “RJD” and “RJD program” refer to the initial outreach and intake of all parties, preparatory communications and meetings, the circle/conference itself, and any follow up communications and meetings that extend through plan completion and case closure, as well as all written and electronic documents and communications related to this process.

**Agreements:**

Types of Referrals. At the present time, the DAO should refer to RJD serious cases permitted by law for diversion and will not refer cases involving homicide or rape. The cases referred to RJD must be felonies or serious misdemeanors and must be crimes that, had they gone through the criminal legal system, would have resulted in penalties of probation or incarceration. These are cases that the DAO would have charged had RJD not existed. It is collectively understood that burglaries, robberies, assaults, arsons, and car theft and carjackings are ideal pre-charge RJD cases. All referred cases should have at least one identifiable survivor, although a small number of cases may ultimately proceed without the survivor’s presence, and instead with a surrogate survivor ideally of the survivor’s choosing. If the CBO does not have the appropriate staffing to take a case or cases, they will notify the DAO.

*Prior History.* Because studies show that youth who reoffend are most successful in the RJD program, the DAO and CBO agree to refer/accept cases of youth with prior records, adjudications of delinquency, deferred adjudications, including those with more than one prior offense and cases that result in a current term of probation. Neither the existence of prior offenses nor current probation status on priors shall be used as a basis for precluding a youth from participating in the RJD program.

The DAO and CBO will refer/accept youth who have prior or active dependent petitions, as long as the youth meets the other criteria for referral. Dependency shall not be used as a basis to preclude a youth from participating in the RJD program.

If a youth was referred to the RJD program in the past, the youth’s prior participation or non-participation in the RJD program in connection with the past referral shall not be considered in determining subsequent eligibility. So long as a youth is arrested on a new charge that meets the referral criteria, that new case should be referred to the RJD program.

If a youth is currently in the RJD program and is arrested for an unrelated charge, so long as that charge also meets the RJD referral criteria, that case shall also be referred to RJD.

Once a youth’s case is referred to the RJD program, it is up to the sole discretion of the CBO to return the case back to the referring agency. The DAO agrees that once the case is referred to the CBO, the referral cannot be undone without good cause.

*Geographic Limitations.* In accordance with the present capacity of **[CBO]**, cases will be diverted solely from within the following geographic areas: **[Insert geographic areas here and note this may be governed by jurisdictional concerns.]** This agreement can be modified by mutual agreements at any time.

*Age of Youth who Caused Harm.* Subject to state law, no age is too young, but **[CBO]** generally cannot take cases of youth older than 17.5 years, unless the youth will remain within the jurisdiction of juvenile court, under applicable state law, for at least six months after the time of referral. The CBO wants to ensure that if the RJD program is not appropriate, enough time will remain for the case to go through traditional channels prior to the youth’s 18th birthday. In some states, a juvenile court can retain jurisdiction over a youth beyond the youth’s 18th birthday under certain circumstances. *See, e.g.,* Cal. Welf. & Inst. Code §§607(g)(1) & (2).

Issues of Guilt. Cases in which there is clear evidence of guilt are best for RJD. The DAO agrees that RJD is not meant to serve as an investigation tool.

Confidentiality Issues.

*Generally*. The DAO understands that any information learned in the RJD process is confidential and will not be accessible. Should the DAO gain access to any information via any aspect of the RJD program, the DAO agrees that such information will be treated as confidential (“Confidential Information”) and shall not be used against the youth accused of a crime in any juvenile or criminal proceeding or determination of probation violations. The DAO agrees not to subpoena information or testimony from RJD facilitators or other CBO staff or otherwise ask them to share Confidential Information learned in matters that involve youth who participate in circle/conference. The DAO also agrees not to subpoena or otherwise interview/investigate other RJD participants (in either prep meetings or in the circle/conference itself) to testify about any Confidential Information that is *learned through the RJD program*. Finally, the DAO **[if including the Probation Department and the Police Department, include them in the signature lines at the end of the document]** agrees that a youth’s agreement to participate in RJD, or the failure of a case to successfully resolve through RJD, will not be introduced into any juvenile or criminal proceedings for any purpose including for impeachment purposes.

Additionally, in cases with co-defendants, if all co-defendants meet the eligibility criteria, all co-defendants should be referred to the RJD program. In the cases where some co-defendants do not meet the eligibility criteria and cannot be referred, then the fact that any co-defendants are participating in RJD cannot be mentioned in any pleadings, probation reports, court proceedings, trial, or plea negotiations.

*Confidentiality and Immunity of Other Participants*. If the youth accused of a crime whose case is referred to RJD brings third party adults and/or other youth under 18 years of age (“Third Parties”) to the circle/conference or prep sessions, or discusses any Third Parties in the circle/conference or prep sessions, the DAO agrees that information, including, but not limited to, the identities of those Third Parties, will be treated as Confidential Information and shall not be used against any of the Third Parties in a court of law. The DAO agrees that any information obtained in the RJD program about Third Parties will not be used against those Third Parties in a court of law, regardless of whether the information pertains to the case at hand. The DAO will take appropriate measures and exercise reasonable care to maintain the confidentiality of all Third Parties.

*Mandatory Reporting.* Nothing in the MOU shall be interpreted in a manner inconsistent with state or local law governing mandatory reporting. Because mandatory reporting requirements may be in conflict with the RJD program, all facilitators must be trained on their reporting requirements and all participants in the program should be warned that certain information cannot be held in confidence under **[insert state]** state law.

*Confidentiality Issues with Regard to Immigration Status*. The DAO understands that any information learned in the RJD process regarding immigration status of any of the participants will be confidential and shall not be accessible to law enforcement. Should the DAO gain access to any *new* information, the DAO agrees that all *new* information learned in the RJD process (including preparatory meetings) regarding the immigration or documentation status of the referred youth, their families and/or caregivers, and others participating in or discussed in the RJD program will be treated as Confidential Information. The DAO agrees not to share such Confidential Information with any federal law enforcement or immigration agencies or authorities. The DAO will oppose any federal or other requests for information regarding the immigration status of any participant. The DAO agrees not to subpoena as a witness or ask questions of any RJD facilitators or other CBO staff about immigration facts learned in matters that involve the youth, the youth’s family and/or caregivers, the other RJD participants, or people discussed during the RJD program. The DAO also agrees not to call other RJD participants (in either preparatory meetings or in the circle/conference itself) to testify or to answer questions about any information regarding immigration status that is learned through the RJD program. The DAO agrees not to ask anyone referred to RJD about their immigration status.

*Multiple Referral Mechanisms*. The confidentiality agreements, above, apply regardless of whether the case is referred to RJD through CBOs, faith-based organizations, schools, police departments, probation, the DA’s office, courts, or individuals.

Prosecution of Uncompleted RJD Cases Returned to Referring Agency. It is understood that prosecution may proceed against youth participants based on information gathered before, after, or otherwise outside the RJD process *if, and only if,* the RJD process is deemed by the CBO to have been unsuccessful in resolving the case. If an uncompleted case is returned to the referring agency, the seriousness of charges and possible penalties cannot be increased unless new information gathered outside the RJD program warrants an increase in the charge or penalty.

When a case has been referred through a law enforcement mechanism—namely school police departments, municipal police departments, probation, or the DAO—the DAO agrees to delay prosecution for 10 months from the date of the referral to RJD and only to prosecute if the case is returned to the referring agency. Subject to state and local law, this time period can be extended upon agreement of all signed parties if the RJD program needs to extend beyond 10 months. This provision is related only to the *specific case referred to RJD* and has no bearing on additional or previous crimes the young person may have committed. This provision is intended solely to delay prosecution of a case referred for RJD pre-charge until a reasonable time has been allotted to resolve the case through RJD.

Where cases have been referred through non-law enforcement mechanisms, such as school district disciplinary entities or CBOs, the DAO may not be aware that RJD is in progress. If any participating organization or agency learns that the DAO has initiated prosecution of a case referred to RJD, the organization/agency will contact the DAO to alert them to the ongoing RJD. All parties to the agreement agree that when cases are being resolved through RJD, RJD should be the sole forum for resolving the matter.

Liaisons and Requests for Cases. The CBO will contact the DAO when they are prepared to take a new case or set of cases. (The charging Assistant District Attorney or other District Attorneys are also welcome to contact a CBO when a case seems appropriate for RJD, although this is not expected.)

Reporting Status/Outcomes. The DAO will receive a brief case status memorandum from the CBO every four weeks that provides the following information: which cases are enrolled, which cases have completed the conference, which cases have completed the plan, and which cases are being returned. If a plan is completed, the case is considered successfully resolved and no charges will be filed. If at any point, the CBO deems the case inappropriate for RJD, the case will be returned to the DAO for prosecution (subject to the protections listed above).

Completion Timelines. At a maximum, the entire process will be completed within ten months from the date of referral, with the exception of specific cases that require time extensions and approval from all signed parties, as outlined above in “Prosecution of Uncompleted RJD Cases Returned to Referring Agency.”

Compensation**.** This MOU does not govern any contractual or financial arrangements between the parties.

Term and Termination. This MOU shall commence on the effective date and shall continue until **[insert termination date here]** unless sooner terminated pursuant to this paragraph: Any party may terminate its obligations under this MOU prior to expiration upon 30-day notice of one to any other. Any CBO may terminate its relationship with the DAO without affecting the remaining relationships governed under this MOU. Any RJD program that commenced under the terms of this agreement will be governed by the terms of this agreement, even if the MOU has been terminated. Commencement is determined by the receipt of the case from the referring entity.

Amendments. If for any reason, alterations or changes are made, all changes will be mutually agreed upon by all parties in a separate agreement as an addendum to this agreement.

Approvals:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**[District Attorney of entire participating** Date

**jurisdiction’s District Attorney’s Office]**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Executive Director Date

[**Participating CBO facilitating RJD]**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**[*optional* Person responsible for RJD]** Date

[**Participating CBO]**