

**DEC 31 2020**

By: A. Husted, Deputy

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**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**  
**CENTRAL DIVISION**

<b>IN RE: PRIORITIZATION OF JURY TRIALS DUE TO THE COVID-19 PANDEMIC</b>	) <b>GENERAL ORDER OF THE PRESIDING DEPARTMENT</b>
	) <b>ORDER NO. 010121-44</b>
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California is in a declared state of emergency due to the COVID-19 pandemic. (See Exec. Order N-33-20.) The California Department of Public Health recently indicated that community spread of infection remains a significant concern across the state. (See Regional Stay At Home Order, December 3, 2020.) Congregate settings are particularly susceptible to expanded transmission of COVID-19, and infection of vulnerable populations in these settings can be catastrophic. (See Statewide Public Health Officer Order, August 28, 2020.) The state’s Blueprint for a Safer Economy (formally known as California’s Plan for Reducing COVID-19 and Adjusting Permitted Sector Activities to Keep Californians Healthy and Safe) contains a slow and stringent reopening plan based on adjusted case rate and test positivity metrics. As of November 10, 2020, San Diego County is rated in the highest risk category (purple tier 1 - widespread) which, among

1 other things, prohibits activities involving indoor, static congregations of large groups of people for  
2 extended durations of time.<sup>1</sup>

3 Due to the pandemic, as well as the related recommended and mandated health and safety  
4 protocols (see e.g., County of San Diego, Order of the Health Officer and Emergency Regulations),  
5 this court was authorized by the Chief Justice to, and did, close to the public for all but the most  
6 time sensitive and essential functions from March 17 through May 22, 2020. (See San Diego  
7 Superior Court, General Orders of the Presiding Department, Ord. Nos. 031820-34, 040320-39, and  
8 043020-47.) In addition, the statutory time to hold criminal trials (Pen. Code § 1382) has been  
9 extended by both state and local emergency orders through at least January 18, 2021. (See Judicial  
10 Council of California, Statewide Emergency Order by Tani G. Cantil-Sakauye, Chief Justice of  
11 California and Chair of the Judicial Council, April 29, 2020; San Diego Superior Court, General  
12 Orders of the Presiding Department, Order Numbers 043020-47, 061220-63, 070120-71, 081020-  
13 82, 090820-87, 100720-95, 110520-101, and 120820-109.) As a result, many new jury trials have  
14 been suspended since March 17, 2020.

15 The court closure and suspension of jury trials in all case types has resulted in a backlog of  
16 well over 1,150 criminal trials. Over 400 of these cases involve in-custody defendants. Remote  
17 jury trials in criminal cases are not a viable option for catching up on this backlog because (1) the  
18 court cannot require it over objection by the defendant (see Emerg. Rules 3, 5); (2) based on  
19 experience and information received from the community, many if not all defendants would object  
20 to a remote jury trial; (3) remote jury trials will present a multitude of hurdles regarding jury  
21 selection and other juror-related issues; and (4) even assuming a defendant would be willing to  
22 consent to a remote jury trial, there is a very limited capacity to have in-custody defendants appear  
23 remotely because, countywide, there are only six rooms at one jail facility and four rooms at each of  
24 the other six jail facilities that are technologically equipped for this purpose. Currently, the court is  
25 holding between 225 and 300 remote non-trial hearings at the detention facilities per day. On most  
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28 <sup>1</sup> Although the court falls under the critical infrastructure category that can be open with modifications, jury trials  
involve indoor, static congregations of people, and the court intends to comply with the applicable restrictions identified  
for similar activities.

1 days, the court's resources in the jail facilities are stretched to capacity with respect to conducting  
2 these remote non-trial hearings that are also vital to the protection of a criminal defendant's rights.  
3 Accordingly, it is logistically impossible for the court to simultaneously hold all of these hearings  
4 and also conduct numerous trials remotely.

5 The San Diego Superior Court's ability to conduct in-person jury trials is also severely  
6 limited, and their resumption is and will continue to be a slow and cumbersome process. The  
7 numerous federal, state and local public health orders that have been issued in response to the  
8 COVID-19 pandemic affect the court's ability to safely bring in large numbers of jurors for multiple  
9 trials at a given time and its ability to coordinate and manage their movements around the  
10 courthouses. For example, in San Diego, temperature checks and symptom screening are required  
11 before entering the courthouse; face coverings must be worn by all persons inside the courthouse;  
12 and six-foot social distancing is enforced in the courthouse. Based on required social-distancing in  
13 particular, jury trials will be hindered by the following limitations:

14 • A significant reduction in the number of jurors summoned to appear at the courthouse at  
15 any one time. The court's jury lounges will have very limited capacity. For example, in Central,  
16 the largest of all the divisions, the jury lounge needs to be limited to approximately 20% capacity,  
17 up to 71 persons; in East County, the jury lounge can only accommodate 64 potential jurors; in  
18 North County, it can only accommodate 56 potential jurors; and in South County, it can only  
19 accommodate 31 potential jurors.

20 • The expected low report-rate of summoned jurors. The court normally experiences an  
21 approximate 10% report rate for newly summoned jurors if it issues the summonses at least six  
22 weeks prior to the report date. The court only expects a report rate of 5% - 7% during the  
23 pandemic, due in part to the facts that San Diegans are under a stay-at-home order; gatherings of  
24 more than one person are generally prohibited; and persons diagnosed with COVID-19, exhibiting  
25 symptoms of COVID-19, or with close contact with persons diagnosed with or exhibiting symptoms  
26 of COVID-19, are required to self-quarantine for at least 10 days.

27 • Placement of potential trial jurors at least six feet apart in the courtroom, or seated in a  
28 jury box with clear protective panels installed between each juror and other courtroom participants.

1 Currently, only five courtrooms have been equipped with the clear protective barriers for all trial  
2 proceeding participants, including the judge and courtroom staff, and the number of courtrooms that  
3 can accommodate an adequate number of socially-distanced jurors is extremely limited. For  
4 example, of the court's 150 courtrooms countywide, only 44 can handle 13 jurors with social  
5 distancing requirements in place, and only 20 can accommodate more than 13 jurors with social  
6 distancing requirements in place. Even in those courtrooms that can accommodate a full jury with  
7 sufficient alternates, many will not have space for any ancillary trial participants, such as  
8 interpreters, victim support persons, or investigating officers, further taxing the scheduling of the  
9 largest courtrooms.

10 • Use of spaces for jury deliberations that are larger than the current deliberation rooms,  
11 such as other courtrooms or larger meeting rooms. The availability of such space is limited, and  
12 will further limit the number of courtrooms available for trial, as well as the number of juries that  
13 can by deliberating simultaneously.

14 • Allowance of only four persons in an elevator at a time, making it slow to move jurors to  
15 any of the courthouse's upper floors for trial.

16 • Allowance of only two persons in a bathroom at a time, prolonging break times during  
17 trial.

18 Given the many logistical, safety, and operational issues, along with the fact that new  
19 procedures have been developed and will need to be tested and adjusted to resolve the many issues  
20 that will certainly arise, the court cannot resume jury trials at full capacity. Instead, the court will  
21 enter this uncharted territory gradually, while continuously assessing and considering the health and  
22 safety of everyone involved and the potential constitutional issues that may arise. And even once  
23 these numbers eventually increase and expand to the other divisions, it still will take a significant  
24 amount of time to get through the backlog of cases. The court does not expect the backlog to be  
25 eliminated before 2021.<sup>2</sup>

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27 2 The court anticipates it will request from the Chief Justice additional extensions of the time provided in Penal Code §  
28 1382 for the holding of criminal trials, pursuant to Government Code § 68115, until such extensions are no longer  
needed. However, the Chief Justice cannot grant an extension of more than 30 days at a time. (Gov. Code §  
68115(a)(10).) It is not feasible to keep placing hundreds of cases on calendar every 30 days.

1 Generally, when resource deficits prevent a court from handling all cases before it in a  
2 timely manner, disproportionate resources should be devoted to criminal matters. (People v.  
3 Engram (2010) 50 Cal.4th 1131, 1161; Pen. Code, § 1050.) However, in exercising the court's  
4 inherent judicial authority to fairly and efficiently administer all pending judicial proceedings, the  
5 court must exercise its discretion to prioritize cases based on its determination of the interests of  
6 justice and the caseload before it. (People v. Engram (2010) 50 Cal.4th 1131, 1146-1149, 1151-  
7 1152.)

8 The above-described exceptional circumstances, created by the COVID-19 pandemic, have  
9 resulted in an enormous backlog of trials and a lack of available courtrooms to timely and safely  
10 bring to trial all of the cases pending before this court. After careful consideration of all of the  
11 above-described circumstances and factors, along with the constitutional due process rights of  
12 parties in the proceedings before this court, all in-custody criminal jury trials shall have priority  
13 over out-of-custody criminal and other case type jury trials until further order of this court. Until  
14 this court orders otherwise, all courtrooms available for jury trials will be used to conduct in-  
15 custody criminal jury trials.<sup>3</sup>

16 Notwithstanding the above, if the judicial officer assigned to any case for trial finds good  
17 cause to prioritize and commence that trial, the judicial officer shall, prior to setting the trial date,  
18 communicate to the Presiding Judge the facts for and against the determination of priority over in-  
19 custody criminal jury trials.

20 THIS ORDER IS EFFECTIVE IMMEDIATELY AND WILL REMAIN IN EFFECT  
21 UNTIL OTHERWISE ORDERED BY THE PRESIDING JUDGE.

22 IT IS SO ORDERED.

23 DATED: December 31, 2020

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25 \_\_\_\_\_  
26 HONORABLE LORNA A. ALKSNE  
27 PRESIDING JUDGE

28 <sup>3</sup> The court and its Justice Partners are working together to prioritize the order in which the in-custody criminal cases should be tried.