

SEP 09 2020

By: A. HUSTED, Deputy

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO

IN RE: PRIORITIZATION OF JURY TRIALS) GENERAL ORDER OF THE
DUE TO THE COVID-19 PANDEMIC) PRESIDING DEPARTMENT
ORDER NO. 090920-89

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 Statewide Public Health Officer Order, August 28, 2020.) Congregate settings are particularly susceptible to expanded transmission of COVID-19, and infection of vulnerable populations in these settings can be catastrophic. (*Ibid.*) 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 September 8, 2020,¹ San Diego County is rated in the

¹ All further references to dates are to the year 2020, unless otherwise stated.

1 second highest risk category (red tier 2 - substantial) which, among other things, limits activities
2 involving indoor, static congregations of large groups of people for extended durations of time to
3 the lower of 25% of capacity or 100 people.²

4 Due to the pandemic, as well as the related recommended and mandated health and safety
5 protocols (see e.g., County of San Diego, Order of the Health Officer and Emergency
6 Regulations), this court was authorized by the Chief Justice to, and did, close to the public for all
7 but the most time sensitive and essential functions from March 17 through May 22. (See San
8 Diego Superior Court, General Orders of the Presiding Department, Ord. Nos. 031820-34,
9 040320-39, and 043020-47.) In addition, the statutory time to hold criminal trials (Pen. Code §
10 1382) has been extended by both state and local emergency orders through at least October 12.
11 (See Judicial Council of California, Statewide Emergency Order by Tani G. Cantil-Sakauye,
12 Chief Justice of California and Chair of the Judicial Council, April 29, 2020; San Diego Superior
13 Court, General Orders of the Presiding Department, Ord. Nos. 043020-47, 061220-63, 070120-
14 71, 081020-82, and 090820-87.) As a result, new jury trials have been suspended since March
15 17.

16 The court closure and suspension of jury trials in all case types has resulted in a backlog
17 of well over 2,000 criminal trials. Over 300 of these cases involve in-custody defendants.
18 Remote jury trials in criminal cases are not a viable option for catching up on this backlog
19 because (1) the court cannot require it over objection by the defendant (see Emerg. Rules 3, 5);
20 (2) based on experience and information received from the community, many if not all
21 defendants would object to a remote jury trial; (3) remote jury trials will present a multitude of
22 hurdles regarding jury selection and other juror-related issues; and (4) even assuming a
23 defendant would be willing to consent to a remote jury trial, there is a very limited capacity to
24 have in-custody defendants appear remotely because, countywide, there are only six rooms at
25 one jail facility and four rooms at each of the other six jail facilities that are technologically
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27 ² Although the court falls under the critical infrastructure category that can be open with modifications, jury trials
28 involve indoor, static congregations of people, and the court intends to comply with the applicable restrictions
identified for similar activities.

1 equipped for this purpose. Currently, the court is holding between 150 and 175 remote non-trial
2 hearings at the detention facilities per day. On most days, the court's resources in the jail
3 facilities are stretched to capacity with respect to conducting these remote non-trial hearings that
4 are also vital to the protection of a criminal defendant's rights. Accordingly, it is logistically
5 impossible for the court to simultaneously hold all of these hearings and also conduct numerous
6 trials remotely.

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

- 16 • A significant reduction in the number of jurors summoned to appear at the courthouse at
17 any one time. The court's jury lounges will have very limited capacity. For example, in
18 Central, the largest of all the divisions, the jury lounge needs to be limited to
19 approximately 20% capacity, up to 71 persons; in East County, the jury lounge can only
20 accommodate 64 potential jurors; in North County, it can only accommodate 56 potential
21 jurors; and in South County, it can only accommodate 31 potential jurors.
- 22 • The expected low report-rate of summoned jurors. The court normally experiences an
23 approximate 10% report rate for newly summoned jurors if it issues the summonses at
24 least six weeks prior to the report date. The court only expects a report rate of 5% - 7%
25 during the pandemic, due in part to the facts that San Diegans are under a stay-at-home
26 order; gatherings of more than one person are generally prohibited; and persons
27 diagnosed with COVID-19, exhibiting symptoms of COVID-19, or with close contact
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1 with persons diagnosed with or exhibiting symptoms of COVID-19, are required to self-
2 quarantine for at least 10 days.

- 3 • Placement of potential trial jurors at least six feet apart in the courtroom, or seated in a
4 jury box with clear protective panels installed between each juror and other courtroom
5 participants. Currently, only two courtrooms have been equipped with the clear
6 protective barriers for all trial proceeding participants, including the judge and courtroom
7 staff, and the number of courtrooms that can accommodate an adequate number of
8 socially-distanced jurors is extremely limited. For example, of the court's 150
9 courtrooms countywide, only 44 can handle 13 jurors with social distancing requirements
10 in place, and only 20 can accommodate more than 13 jurors with social distancing
11 requirements in place. Even in those courtrooms that can accommodate a full jury with
12 sufficient alternates, many will not have space for any ancillary trial participants, such as
13 interpreters, victim support persons, or investigating officers, further taxing the
14 scheduling of the largest courtrooms.
- 15 • Use of spaces for jury deliberations that are larger than the current deliberation rooms,
16 such as other courtrooms or larger meeting rooms. The availability of such space is
17 limited, and will further limit the number of courtrooms available for trial, as well as the
18 number of juries that can be deliberating simultaneously.
- 19 • Allowance of only four persons in an elevator at a time, making it slow to move jurors to
20 any of the courthouse's upper floors for trial.
- 21 • Allowance of only two persons in a bathroom at a time, prolonging break times during
22 trial.

23 In its effort to safely resume jury trials, the court has summoned jurors for one criminal
24 trial in the Central courthouse beginning October 13, a second criminal trial beginning October
25 19, and two criminal trials per week starting October 26. Given the many logistical, safety, and
26 operational issues, along with the fact that new procedures have been developed and will need to
27 be tested and adjusted to resolve the many issues that will certainly arise, the court cannot
28 initially resume jury trials at full capacity. Instead, the court will enter this uncharted territory

1 gradually beginning October 13, while continuously assessing and considering the health and
2 safety of everyone involved and the potential constitutional issues that may arise. And even once
3 these numbers eventually increase and expand to the other divisions, it still will take a significant
4 amount of time to get through the backlog of cases. The court does not expect the backlog to be
5 eliminated before 2021.³

6 Generally, when resource deficits prevent a court from handling all cases before it in a
7 timely manner, disproportionate resources should be devoted to criminal matters. (*People v.*
8 *Engram* (2010) 50 Cal.4th 1131, 1161; Pen. Code, § 1050.) However, in exercising the court's
9 inherent judicial authority to fairly and efficiently administer all pending judicial proceedings,
10 the court must exercise its discretion to prioritize cases based on its determination of the interests
11 of justice and the caseload before it. (*People v. Engram* (2010) 50 Cal.4th 1131, 1146-1149,
12 1151-1152.)

13 The above-described exceptional circumstances, created by the COVID-19 pandemic,
14 have resulted in an enormous backlog of trials and a lack of available courtrooms to timely and
15 safely bring to trial all of the cases pending before this court. After careful consideration of all
16 of the above-described circumstances and factors, along with the constitutional due process
17 rights of parties in the proceedings before this court, all in-custody criminal jury trials shall have
18 priority over out-of-custody criminal and other case type jury trials until further order of this
19 court. Until this court orders otherwise, all courtrooms available for jury trials will be used to
20 conduct in-custody criminal jury trials.⁴

21 Notwithstanding the above, if the judicial officer assigned to any case for trial finds good
22 cause to prioritize and commence that trial, the judicial officer shall, prior to setting the trial date,
23 communicate to the Presiding Judge the facts for and against the determination of priority over

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27 3 The court anticipates it will request from the Chief Justice additional extensions of the time provided in Penal
28 Code § 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.

4 The court and its Justice Partners are working together to prioritize the order in which the in-custody criminal

1 in-custody criminal jury trials.

2 THIS ORDER IS EFFECTIVE IMMEDIATELY.

3 IT IS SO ORDERED.

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5 DATED: 9-9-20



HON. LORNA A. ALKSNE
PRESIDING JUDGE

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