

**F I L E D**  
Clerk of the Superior Court

**DEC 27 2021**

By: A. Husted, Deputy

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

**IN RE: PRIORITIZATION OF JURY  
TRIALS DUE TO THE COVID-19  
PANDEMIC**

**GENERAL ORDER OF THE PRESIDING  
DEPARTMENT**

**ORDER NO. 010122-36**

**THE COURT HEREBY FINDS AND ORDERS:**

California continues to be in a declared state of emergency due to the COVID-19 pandemic.  
(See Proclamation of a State of Emergency, dated March 4, 2020.)

From March 17, 2020, through May 25, 2020, due to the pandemic and the related recommended and mandated health and safety protocols (see e.g., County of San Diego, Order of the Health Officer and Emergency Regulations), this court was authorized by the Chief Justice to, and did, close to the public for all but the most time-sensitive and essential functions. (See San Diego Superior Court, General Orders of the Presiding Department, Ord. Nos. 031820-34, 040320-39, and 043020-47.)

From May 26, 2020, through June 15, 2021, the San Diego Superior Court's ability to conduct in-person jury trials was also severely limited, and the resumption of jury trials has been a slow and cumbersome process. Specifically, the numerous federal, state, and local public health orders that were issued in response to the COVID-19 pandemic affected the court's ability to bring

1 in large numbers of jurors for multiple trials at a given time and its ability to coordinate and manage  
2 jurors' movements around the courthouses. For example, in San Diego County, all persons entering  
3 the courthouse were required to undergo temperature checks and symptom screening, wear face  
4 coverings, and maintain six-foot physical distancing at all times. Based on required physical-  
5 distancing in particular during this time, jury trials were hindered by the following limitations:

- 6 • Maximum capacity in jury lounges: The court's jury lounges had very limited capacity after  
7 allowing for physical distancing requirements, which led to a significant reduction in the  
8 number of jurors that could be summoned to the courthouse at any one time. For example,  
9 in Central, the largest of the court's divisions, the jury lounge needed to be limited to  
10 approximately 20% capacity, up to 71 persons; in East County, the jury lounge could only  
11 accommodate 64 potential jurors; in North County, it could only accommodate 56 potential  
12 jurors; and in South County, it could only accommodate 31 potential jurors.
- 13 • Maximum capacity in courtrooms: The court was only able to equip up to thirteen  
14 courtrooms with protective barriers necessary for all jury trial proceeding participants,  
15 including the judge and courtroom staff, and the number of courtrooms large enough to  
16 accommodate an adequate number of physically distanced jurors without protective barriers  
17 was extremely limited. For example, of the court's 150 courtrooms countywide, only 44  
18 could handle 13 jurors with physical distancing requirements in place, and only 20 could  
19 accommodate more than 13 jurors with physical distancing requirements in place. Even in  
20 those courtrooms that could accommodate a full jury with sufficient alternates, many would  
21 not have had space for any ancillary trial participants, such as interpreters, victim support  
22 persons, or investigating officers, further taxing the scheduling of the largest courtrooms.  
23 As such, there was a significant reduction of courtrooms that could accommodate enough  
24 jurors to hear trials.
- 25 • Maximum capacity in jury deliberation rooms: The court's jury deliberation rooms were not  
26 large enough to allow for social distancing requirements, and installing protective barriers  
27 was not feasible. As such, alternative spaces were needed for jury deliberations, such as  
28 other courtrooms or larger meeting rooms. The availability of such space was limited, and

1 further constrained the number of courtrooms available for trials, as well as the number of  
2 juries that could be deliberating simultaneously.

- 3 • Maximum capacity in elevators: Public health guidance only allowed for four persons in an  
4 elevator at a time, making it slow to move jurors to and from any of the courthouses' upper  
5 floors.
- 6 • Maximum capacity in bathrooms: Public health guidance only allowed for two persons in a  
7 bathroom at a time, causing prolonged break times and longer trials.

8 In addition, remote jury trials in criminal cases were not a viable option for the following  
9 reasons: Based on experience and information received from both the community and justice  
10 partners, most (if not all) defendants would have objected to a remote jury trial, and the court could  
11 not require remote trials without consent (see Emerg. Rules 3, 5). In addition, even assuming a  
12 defendant would have been willing to consent to a remote jury trial, the court would have had to  
13 overcome other significant hurdles, including the logistics of conducting jury selection, fielding  
14 other juror-related issues remotely, and having a defendant produced remotely. As to the latter  
15 point, there was a very limited capacity to have in-custody defendants appear remotely because,  
16 countywide, there were only six rooms at one jail facility and four rooms at each of the other six jail  
17 facilities that were technologically equipped for remote appearances, and those resources were  
18 already stretched to capacity with other remote, non-trial hearings that were being conducted each  
19 day.

20 In fact, due to the many hurdles facing the court system during the pandemic, the statutory  
21 time to hold criminal trials (Pen. Code § 1382) has been extended by both state and local emergency  
22 orders through at least January 25, 2022. (See Judicial Council of California, Statewide Emergency  
23 Order by Tani G. Cantil-Sakauye, Chief Justice of California and Chair of the Judicial Council,  
24 April 29, 2020; San Diego Superior Court, General Orders of the Presiding Department, Order  
25 Numbers 040320-39, 043020-47, 061220-63, 070120-71, 081020-82, 090820-87, 100720-95,  
26 110520-101, 120820-109, 010121-48, 010821-52, 020321-56, 031021-60, 040821-65, 050621-69,  
27 060721-73, 070821-78, 080621-82, 090221-85, 100621-88, 110421-91, and 120321-96.)

1 To cope with the many issues created by the COVID-19 pandemic, the court has had to enter  
2 into uncharted territory gradually, while continuously assessing and considering the health and  
3 safety of everyone involved and the potential constitutional issues at stake.

4 For example, on June 16, 2021, the court generally restored in-person access to pre-  
5 pandemic levels while continuing to maintain many of the online and remote options that were  
6 introduced during the pandemic. On July 6, 2021, in the Central Courthouse, the court resumed  
7 daily in-person reporting of jurors, although the court was summoning approximately half of the  
8 average pre-pandemic number of jurors. Jurors called to serve in the North, South, and East  
9 Courthouses continue to be on weekly telephone standby. As of July 19, 2021, the court increased  
10 the number of jury summonses to pre-pandemic levels. The court has resumed using all of its  
11 courtrooms now that physical distancing requirements have been lifted.

12 However, the above-described exceptional circumstances created by the COVID-19  
13 pandemic, has resulted in approximately 2,250 criminal cases with pending trial dates through  
14 January 31, 2022, including approximately 500 cases involving in-custody defendants. In total, the  
15 court has approximately 1000 felony cases and 3350 misdemeanor cases with pending trial dates  
16 through May 2022. Logistical and safety issues continue to affect the court and parties/witnesses,  
17 such that the ability for trials to move forward at pre-pandemic levels continues to be negatively  
18 affected. And, even if the court were operating at its full pre-pandemic capacity of 70-90 jury trials  
19 per month (including criminal and civil), it would still take a significant amount of time to get  
20 through this number of cases. The court does not expect these numbers to be significantly reduced  
21 in the next several months.

22 Generally, when resource deficits prevent a court from handling all cases before it in a  
23 timely manner, disproportionate resources should be devoted to criminal matters. (*People v.*  
24 *Engram* (2010) 50 Cal.4th 1131, 1161; Pen. Code, § 1050.) Also, absent good cause, prosecutions  
25 for in-custody felonies and misdemeanors should generally be disposed of before prosecutions for  
26 out-of-custody felonies and misdemeanors. (Pen. Code, § 1048(a).) In addition, when the time  
27 period provided in Penal Code section 1382 has been extended by a judicial emergency order  
28 pursuant to Government Code section 68115, “the trial of a defendant in custody whose time is so

1 extended shall be given preference over all other cases.” (Gov. Code, § 68115(10).) However, in  
2 exercising the court’s inherent judicial authority to fairly and efficiently administer all pending  
3 judicial proceedings, the court must exercise its discretion to prioritize cases based on its  
4 determination of the interests of justice and the caseload before it. (*People v. Engram, supra*, 50  
5 Cal.4th at pp. 1146-1149, 1151-1152.)

6 After careful consideration of all of the above-described circumstances and factors, along  
7 with the constitutional due process rights of parties in the proceedings before this court, for the  
8 purposes of both setting trial dates and sending ready cases out for trial, all in-custody criminal jury  
9 trials shall have priority over out-of-custody criminal and other case type jury trials until further  
10 order of this court. Jury trials for case types other than in-custody criminal cases will be prioritized  
11 based on the interests of justice and the caseload before the court, including, but not limited to, the  
12 age of the case and other statutory prioritization considerations. Specifically, for trial call, if no in-  
13 custody criminal jury trials are ready to proceed or there is a surplus of jurors for such cases on a  
14 particular day, then jurors may be assigned to other case types that may have trials ready to proceed.  
15 For setting trial dates and trial call, regarding the age of the case, older cases, including the more  
16 than 800 felony and 5,500 misdemeanor cases referenced above that already have pending trial  
17 dates through the end of 2021, should be given priority over newer criminal cases unless good cause  
18 exists to the contrary.<sup>1</sup>

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

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28 <sup>1</sup> The court anticipates requesting from the Chief Justice additional extensions of the time provided in Penal 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.

1           This Order shall become effective on January 1, 2022 and will remain in effect until  
2 otherwise ordered by the Presiding Judge.

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4           IT IS SO ORDERED.

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6 DATED: December 27, 2021



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8           **HONORABLE MICHAEL T. SMYTH**  
9           **PRESIDING JUDGE**  
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