

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

**AUG 31 2021**

By: A. Husted, Deputy

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

<b>IN RE: PRIORITIZATION OF JURY</b>	)	<b>GENERAL ORDER OF THE PRESIDING</b>
<b>TRIALS DUE TO THE COVID-19</b>	)	<b>DEPARTMENT</b>
<b>PANDEMIC</b>	)	<b>ORDER NO. 072721-80(A)</b>
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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 in large numbers of jurors for multiple trials at a given time and its ability to coordinate and manage jurors' movements around the courthouses. For example, in San Diego County, all persons entering

1 the courthouse were required to undergo temperature checks and symptom screening, wear face  
2 coverings, and maintain six-foot physical distancing at all times. Based on required physical-  
3 distancing in particular, jury trials were hindered by the following limitations:

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

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

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

18 In fact, due to the many hurdles facing the court system during the pandemic, the statutory  
19 time to hold criminal trials (Pen. Code § 1382) has been extended by both state and local emergency  
20 orders through at least September 23, 2021. (See Judicial Council of California, Statewide  
21 Emergency Order by Tani G. Cantil-Sakauye, Chief Justice of California and Chair of the Judicial  
22 Council, April 29, 2020; San Diego Superior Court, General Orders of the Presiding Department,  
23 Order Numbers 040320-39, 043020-47, 061220-63, 070120-71, 081020-82, 090820-87, 100720-95,  
24 110520-101, 120820-109, 010121-48, 010821-52, 020321-56, 031021-60, 040821-65, 050621-69,  
25 060721-73, 070821-78, and 080621-82.)

26 Given the many logistical, safety, and operational issues, along with the fact that new  
27 procedures have had to be developed, tested, and adjusted, the court has not been able to resume  
28 jury trials at full capacity. Instead, the court has had to enter this uncharted territory gradually,

1 while continuously assessing and considering the health and safety of everyone involved and the  
2 potential constitutional issues at stake.

3 Effective June 16, 2021, in accordance with revisions to state and local guidelines, the court  
4 implemented modifications to its services and operations for court users, including generally  
5 restoring in-person access to pre-pandemic levels while continuing to maintain many of the online  
6 and remote options that were introduced during the pandemic. After Cal/OSHA's revisions to its  
7 COVID-19 Prevention Emergency Temporary Standards became effective on June 17, 2021, the  
8 court implemented health and safety procedures and mitigation efforts in all court facilities, for all  
9 court users and employees, which include the following:<sup>1</sup>

- 10 • Face coverings are optional for individuals who are fully vaccinated and required for those  
11 who are not fully vaccinated.
- 12 • Physical distancing and plexiglass barriers are no longer required; however, many of the  
13 plexiglass barriers that the court previously installed will remain in place.
- 14 • Members of the public who are not feeling well, are exhibiting symptoms of COVID-19, or  
15 are subject to an isolation or quarantine order are asked to stay home and seek assistance  
16 online, by telephone, or via mail.
- 17 • The court continues to exclude all court employees, regardless of vaccination status, from  
18 the workplace if they test positive for, or are experiencing symptoms of, COVID-19, and the  
19 court continues to contact trace and exclude employees who are not fully vaccinated from  
20 the workplace if they have close contact with a positive or symptomatic individual.

21 The court has resumed using all of its courtrooms now that physical distancing requirements  
22 have been lifted, and jury summonses are gradually being brought back up to pre-pandemic levels.  
23 Beginning July 6, 2021, in the Central Courthouse, the court resumed daily in-person reporting of  
24 jurors. Jurors called to serve in the North, South, and East Courthouses will continue to be on  
25 weekly telephone standby. Also, as of July 6, 2021, the court was summoning approximately half  
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28 <sup>1</sup> The measures described herein are current as of July 27, 2021; however, the court will continue to monitor and follow public health requirements as they continue to develop. For example, on August 23, 2021, a mandatory face-covering order was re-instated in every courthouse, regardless of vaccination status.

1 of the average pre-pandemic number of jurors in the Central Courthouse, and the court has  
2 increased the number of summonses to pre-pandemic levels as of July 19, 2021.

3 The above-described exceptional circumstances, created by the COVID-19 pandemic, have  
4 resulted in approximately 2,700 criminal cases with pending trial dates through August 31, 2021,  
5 including approximately 500 cases involving in-custody defendants. In total, the court has more  
6 than 800 felony cases and more than 5,500 misdemeanor cases with pending trial dates through the  
7 end of 2021. Even if the court were operating at its full pre-pandemic capacity of 70-90 jury trials  
8 per month (including criminal and civil), it would still take a significant amount of time to get  
9 through this number of cases. The court does not expect these numbers to be significantly reduced  
10 before the end of 2021.

11 Generally, when resource deficits prevent a court from handling all cases before it in a  
12 timely manner, disproportionate resources should be devoted to criminal matters. (*People v.*  
13 *Engram* (2010) 50 Cal.4th 1131, 1161; Pen. Code, § 1050.) Also, absent good cause, prosecutions  
14 for in-custody felonies and misdemeanors should generally be disposed of before prosecutions for  
15 out-of-custody felonies and misdemeanors. (Pen. Code, § 1048(a).) In addition, when the time  
16 period provided in Penal Code section 1382 has been extended by a judicial emergency order  
17 pursuant to Government Code section 68115, “the trial of a defendant in custody whose time is so  
18 extended shall be given preference over all other cases.” (Gov. Code, § 68115(10).) However, in  
19 exercising the court’s inherent judicial authority to fairly and efficiently administer all pending  
20 judicial proceedings, the court must exercise its discretion to prioritize cases based on its  
21 determination of the interests of justice and the caseload before it. (*People v. Engram, supra*, 50  
22 Cal.4th at pp. 1146-1149, 1151-1152.)

23 After careful consideration of all of the above-described circumstances and factors, along  
24 with the constitutional due process rights of parties in the proceedings before this court, for the  
25 purposes of both setting trial dates and sending ready cases out for trial, all in-custody criminal jury  
26 trials shall have priority over out-of-custody criminal and other case type jury trials until further  
27 order of this court. Jury trials for case types other than in-custody criminal cases will be prioritized  
28 based on the interests of justice and the caseload before the court, including, but not limited to, the

1 age of the case and other statutory prioritization considerations. Specifically, for trial call, if no in-  
2 custody criminal jury trials are ready to proceed or there is a surplus of jurors for such cases on a  
3 particular day, then jurors may be assigned to other case types that may have trials ready to proceed.  
4 For setting trial dates and trial call, regarding the age of the case, older cases, including the more  
5 than 800 felony and 5,500 misdemeanor cases referenced above that already have pending trial  
6 dates through the end of 2021, should be given priority over newer criminal cases unless good cause  
7 exists to the contrary.<sup>2</sup>

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

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

14 IT IS SO ORDERED.

15 DATED: August 31, 2021

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18 HONORABLE LORNA A. ALKSNE  
19 PRESIDING JUDGE  
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27 <sup>2</sup> The court anticipates requesting 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.