



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 20-131

For business meeting on: March 28, 2020

Title	Agenda Item Type
Judicial Branch Administration: Response to the COVID-19 Pandemic	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
None	March 28, 2020
Recommended by	Date of Report
Hon. Marsha G. Slough, Chair, Executive and Planning Committee	March 27, 2020
Hon. David M. Rubin, Chair, Judicial Branch Budget Committee and Litigation Management Committee	
Hon. Kyle S. Brodie, Chair, Judicial Council Technology Committee	
Hon. Marla O. Anderson, Chair, Legislation Committee	
Hon. Harry E. Hull, Jr., Chair, Rules Committee	

Executive Summary

Because of the immediate and ongoing impact of the COVID-19 pandemic on California's judicial branch and at the request of Chief Justice Tani G. Cantil-Sakauye, Chair of the Judicial Council, the chairs of the Judicial Council's six internal committees recommend that the Judicial Council: (A) authorize and support the Chief Justice and Chair of the Judicial Council in extending deadlines for certain court proceedings until 90 days after the state of emergency related to COVID-19 is lifted; (B) direct the superior courts to use technology in court proceedings and operations, when possible, to conduct judicial proceedings and court operations remotely, to meet the constitutional due process rights of defendants, and to comply with social-distancing mandates; and (C) submit a recommendation to the Governor requesting an

emergency executive order that suspends all legal authorities that impede the use of technology in court proceedings and authorizes the Chair of the Judicial Council to extend deadlines for certain court proceedings until 90 days after the state of emergency related to COVID-19 is lifted. Pursuant to its authority under article VI, section 6 of the California Constitution as the policymaking body of the California judicial branch, the Judicial Council should take these temporary actions due to the unprecedented nature of the COVID-19 pandemic, in order to protect the health and safety of the public, court employees, attorneys, litigants, and judicial officers, as well as staff and inmates in detention facilities, and law enforcement.

Recommendation

The chairs of the Judicial Council's six internal committees recommend that the Judicial Council:

- A. Authorize and support the Chief Justice and Chair of the Judicial Council, in issuing statewide orders that do the following until 90 days after the state of emergency related to COVID-19 is lifted:
 1. Extending the 10 court day period provided in Penal Code section 859b for the holding of a preliminary examination and the defendant's right of release to 30 court days;
 2. Extending the time period provided in Penal Code section 825 for the time in which a defendant charged with a felony offense shall be taken before a magistrate from 48 hours to not more than 7 days;
 3. Extending the time period provided in Penal Code section 1382 for the holding of a criminal trial by more than 30 days; and
 4. Extending the time periods provided in Code of Civil Procedure sections 583.310 and 583.320 to bring an action to trial by more than 30 days.¹
- B. Direct the superior courts to:
 1. Make use of available technology, when possible, to conduct judicial proceedings and court operations remotely, in order to protect the health and safety of the public, court personnel, judicial officers, litigants, and witnesses. This includes the use of video, audio, and telephonic means for remote appearances, reporting, and interpreting in judicial proceedings, the electronic exchange and authentication of documentary evidence, and the use of e-filing and e-service; and
 2. For criminal and juvenile proceedings, including arraignments and preliminary examinations, prioritize use of available technology to meet current statutory time

¹ The Judicial Council's action would supplement, and in no way restrict or reduce, the Chief's authority under the provisions of Government Code section 68115.

requirements and ensure that defendants are not held in custody, and children are not held in custody or removed from the custody of their parents or guardians, without timely due process of law or in violation of constitutional rights.

- C. Recommend to the Governor that he issue an executive order, effective until 90 days after the state of emergency related to COVID-19 is lifted that, notwithstanding current law:
1. Extends the 10 court day period provided in Penal Code section 859b for the holding of a preliminary examination and the defendant's right of release to 30 court days;
 2. Extends the time period provided in Penal Code section 825 for the time in which a defendant charged with a felony offense shall be taken before a magistrate from 48 hours to not more than 7 days;
 3. Extends the authority in Government Code section 68115 to allow the Chair of the Judicial Council to issue statewide emergency orders without the need for individual requests; and
 4. Suspends all statutory authority that impedes the courts from making use of technology that allows courts to conduct judicial proceedings and court operations remotely, in order to protect the health and safety of the public, court personnel, judicial officers, litigants, and witnesses. This includes the use of video, audio, and telephonic means for remote appearances, reporting, and interpreting in judicial proceedings, the electronic exchange and authentication of documentary evidence, and the use of e-filing and e-service.

Relevant Previous Council Action

This would be the first action taken by the Judicial Council to address the impact of the COVID-19 pandemic as it affects California's residents and judicial branch. The Chief Justice and Chair of the Judicial Council has issued two advisories² and one order,³ as well as approximately 80 individual emergency orders at the request of courts.⁴

Analysis/Rationale

At the time of this writing, the United States has become the epicenter of the global pandemic caused by the COVID-19 virus. This week it was reported that there have been more than 500,000 confirmed cases of COVID-19 in the world with more than 23,000 deaths.

² The two advisories may found here: <https://newsroom.courts.ca.gov/news/california-chief-justice-issues-guidance-to-expedite-court-emergency-orders>, and <https://newsroom.courts.ca.gov/news/california-chief-justice-issues-second-advisory-on-emergency-relief-measures>.

³ Statewide order: <https://newsroom.courts.ca.gov/news/chief-justice-issues-statewide-order-suspending-jury-trials>.

⁴ Copies of the emergency orders may found here: <https://newsroom.courts.ca.gov/news/court-emergency-orders-6794321>.

In one of the earliest responses in the country, Governor Gavin Newsom on March 4 proclaimed a State of Emergency in California as a result of the threat of COVID-19.⁵ Despite sustained efforts by all levels of government and health departments, COVID-19 continues to spread rapidly and is impacting nearly all sectors of California, including the court system.

The Governor's COVID-19 website reported this week that in California there are more than 3,000 positive cases and 65 deaths. A surge of COVID-19 cases is expected in the next two weeks, and the Governor said that the state needs another 50,000 hospital beds to accommodate new cases. The need for social distancing is a daily reminder with the closure of all venues with public gatherings, including this week state parks and beaches.

The continuous operation of our courts is essential for our constitutional form of government, for providing due process and protecting the public. However, courts are clearly places with high risks during this pandemic because they require gatherings of judicial officers, court staff, litigants, attorneys, witnesses, defendants, law enforcement, and juries—well in excess of the numbers allowed for gathering under current executive and health orders.

Many court facilities in California are indeed ill-equipped to implement social distancing and satisfy other public health requirements necessary to protect people involved in court proceedings and prevent the further spread of COVID-19. Indeed, over the past two weeks media reports have roundly criticized courts in California and elsewhere for not ensuring safe social distancing for those coming to our courthouses. In one California court, three court reporters have become ill with COVID-19.

Every state and territory in the country has now delayed jury trials. This week the New York State Unified Court System has implemented temporary “virtual court” operations in the New York City Criminal and Family Courts to reduce courtroom density and stem the spread of the coronavirus.

Clearly, courts must provide due process for defendants who are currently in custody and are entitled to timely pretrial appearances.

On March 24, 2020, the Governor issued an order to suspend intake of all incarcerated persons into both adult state prisons and Division of Juvenile Justice facilities at the county level for a minimum of 30 days, which will impact county jail and juvenile detention facility populations.⁶ This is only one of numerous executive orders the Governor has issued in order to control the spread of COVID-19 throughout the State of California.

The spread of the virus has hit California's inmate population as well as staff members in the prison system. Many inmates have ongoing court cases. Courts cannot be assured that safe social

⁵ <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf>.

⁶ <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.24.20-EO-N-36-20.pdf>.

distancing can be maintained with the transport of in-custody defendants and the holding cells adjacent to or in courthouses.

At the time of this report, there are multiple reports of early releases of adult inmates and youthful offenders because detention facilities cannot accommodate the social distancing required for public health and safety.

The impact of COVID-19 changes hourly. This report need not and could not possibly describe all the events and direct and indirect impacts that result from this pandemic. The conclusion that action is warranted is inescapable: It is abundantly clear that measures must be immediately taken to protect the health and safety of the public, of the staff and inmates in local detention facilities, law enforcement, court employees, attorneys, and judges. The courts must balance public safety and health concerns of everyone involved in court proceedings with the constitutional rights of accused defendants.

Technological solutions are available to allow state courts to conduct essential court functions (such as arraignments and hearings), while at the same time implementing the social-distancing measures necessary to limit the spread of COVID-19.

The California Constitution, article VI, section 6 charges the Chief Justice with, among other things, the duty of expediting judicial business. The Chief Justice has already exercised this authority with an order to suspend and continue all jury trials for 60 days. In addition, she has exercised her authority under Government Code section 68115 to issue approximately 80 separate emergency orders requested by local courts.

Article VI, section 6 also vests authority to take action with the Judicial Council, which was created in 1926 in part “to regulate court practice and procedure and exercise functions provided by law.” The ballot argument for the creation of the council was submitted by two state senators, who argued that the council would be “charged with the duty of seeing that justice is being properly administered.” The ballot argument states that when a remedy for the administration is needed, “it will be the duty of the council to propose a remedy, and if this cannot be done without an amendment to the laws the council will recommend to the legislature any change in the law which it deems necessary.”

The orders and practices of local courts in response to COVID-19 have varied depending on the need of the courts requesting them. Unfortunately, a high degree of variation within the state’s court system will likely increase and can create an uneven response to the effects of COVID-19 at a time when uniformity is warranted to protect the public health and safety. The variation of local practices and the many questions to the Chief Justice regarding daily operations related to pretrial procedures necessitate Judicial Council action.

To enhance public safety by regulating court procedures and practices, the council is being asked to authorize and approve the Chief Justice’s efforts to extend certain deadlines in court proceedings; direct the trial courts to use technology, when possible, to conduct judicial

proceedings and court operations remotely, to meet the constitutional due process rights of defendants, and to comply with social-distancing mandates; and recommend that the Governor issue an executive order that extends certain deadlines in court proceedings, supports the Chief Justice's authority in issuing statewide emergency orders, and suspends legal limitations on the courts' use of technology to allow courts to continue providing critical services and proceedings, while complying with due process rights and social-distancing mandates.

The temporary relief contemplated here will extend only through the time of the state of emergency, as well as a period of 90 days afterward to allow the courts time to address any backlog that accumulates during the crisis, despite the courts' best efforts, and to allow the courts to coordinate an orderly return to business.

Policy implications

The COVID-19 pandemic presents an unprecedented crisis that threatens the lives, health, and safety of all Californians. California courts, however, provide critical services that also affect the lives of many Californians, including some of the most vulnerable. Given the length of time the pandemic may impact the state, the courts cannot delay all proceedings indefinitely and must find a way to continue to provide the most critical services. The use of technology, whenever possible, will allow the work of the courts to continue, while allowing for appropriate social distancing. Authority to extend deadlines for holding proceedings will allow the courts time to put these measures in place. This proposal would fulfill the Judicial Council's mission of improving the administration of justice by balancing the court's need to continue providing services, while making responsible efforts to deploy technology to conduct judicial proceedings and court operations remotely, to meet the constitutional due process rights of defendants, and to comply with social-distancing mandates to prevent the spread of COVID-19 and help preserve the health and safety of all California residents.

Comments

Due to the incredible speed with which the COVID-19 pandemic has spread and the urgent need to provide courts with the tools necessary to keep providing necessary services, while protecting the health and safety of the public and those who interact with the courts, the proposal recommended here has not been circulated for comment.

Alternatives considered

The council could take no action. Over the past month, however, individual courts have been struggling to address the impact of COVID-19. This has led to a lack of uniformity in the courts' approach to the crisis. Although statute mandates decentralized trial court management, the Judicial Council does have a role in supporting the courts, providing leadership, and coordinating efforts to communicate with the Governor and the Legislature. Given the severity of the crisis, the chairs of the Judicial Council's six internal committees concluded that this recommendation was necessary to help give courts the tools they need to confront the impact of the COVID-19 pandemic. Specifically, the proposal would facilitate greater use of technology to allow court proceedings to continue, while protecting the public by complying with social-distancing mandates. When technology is not available or appropriate, the extensions of time contemplated

in the proposal will allow the courts to find other ways to conduct their critical business and allow for the postponement of less critical business until a time when it is safer to convene proceedings that must be convened in person.

Fiscal and Operational Impacts

It is anticipated that the proposal will facilitate court operations, allowing courts to continue critical functions, while protecting the health and safety of all who would be attending court in person, by effecting compliance with social-distancing mandates. It is uncertain what fiscal impact the proposal may have on the courts.

Attachments and Links

None.