TO: Presiding Judges and Court Executive Officers of the California Courts
FROM: Tani G. Cantil-Sakauye, Chief Justice of California
DATE: March 20, 2020
RE: Advisory on COVID-19 and Court Operations

Dear Judicial Branch Colleagues:

I write to share information on actions we are taking at the state level regarding the current crisis in our California court system resulting from COVID-19, and to provide guidance on ways that might mitigate some of the health risks to judicial officers, court staff, and court users.

Governor Newsom's order last night for all Californians to shelter in place reflects the unprecedented challenge we face with the COVID-19 virus, both as Californians and as judicial officers and court administrators. We sought and received clarification from the Governor's office that the Governor's order is not meant to close our courts. The courts are—and continue to be—considered as an essential service. I recognize, however, that this new adjustment to health guidelines and direction likely may require further temporary adjustment or suspension of certain court operations, keeping in mind, as we all are, that we are balancing constitutional rights of due process with the safety and health of all court users and employees.

We are working at both the state and local levels to identify more options to provide relief. Aiding in these efforts are the perspectives and input from the TCPJAC and CEAC chairs and vice chairs who are dealing with local emergencies while making time to focus on the welfare of our larger judicial branch family.

In addition, we are in daily, close contact with the Governor's office, executive branch departments, and legislative leadership to make them aware of the impact on courts as well as to see where immediate and longer-term assistance may be needed to respond to a crisis of this magnitude.

I am deeply concerned about the disruption and hardships caused by the COVID-19 crisis and I have applied and will continue to apply all the constitutional and statutory powers of my office to minimize these unprecedented problems.

I, like many of you, am being contacted by justice system partners and advocates seeking immediate and direct action to address the particular needs of their constituencies. In responding to these requests, we have made clear what the limits of authority are for the Chief Justice and the Judicial Council, as well as the role of independent trial courts to manage their operations, while stressing our shared commitment to be responsive within the framework of respective constitutional and statutory responsibilities.

The relief I am authorized to grant with an emergency order is limited to the items enumerated in Government Code section 68115. In California, unlike other states, each of the 58 superior courts

retains local authority to establish and maintain its own court operations. This decentralized nature of judicial authority is a statutory structure that reflects the diversity of each county. In an effort to alleviate some of the immediate problems faced by the trial courts, I have authorized court holidays and extensions of time for court procedures in response to requests submitted by the presiding judges in many superior courts, with the understanding that the immense diversity of our state may require variations on what is considered an essential or priority service in a particular court or community.

I will continue to grant emergency order requests while balancing fairness and access to justice. As of writing, 63 emergency orders have been processed with several more pending. In light of the continuing emergency posed by the COVID-19 pandemic, I am prepared to approve requests for further extensions as warranted, consistent with my authority under Government Code section 68115(b).

In addition to the steps you have taken under the orders you have been granted, I strongly encourage to you consider the following suggestions to mitigate the effect of reduced staffing and court closures and to protect the health of judges, court staff, and court users.

These actions can be taken immediately to protect constitutional and due process rights of court users. They will require close collaboration with your local justice system partners.

Criminal Procedures

1. Revise, on an emergency basis, the countywide bail schedule to lower bail amounts significantly for the duration of the coronavirus emergency, including lowering the bail amount to $0 for many lower level offenses – for all misdemeanors except for those listed in Penal Code section 1270.1 and for lower-level felonies. This will result in fewer individuals in county jails thus alleviating some of the pressures for arraignments within 48 hours and preliminary hearings within 10 days.
2. In setting an adult or juvenile defendant's conditions of custody, including the length, eligibility for alternative sentencing, and surrender date, the court should consider defendant's existing health conditions, and any conditions existing at defendant's anticipated place of confinement that could affect the defendant's health, the health of other detainees, or the health of personnel staffing the anticipated place of confinement.
3. With the assistance of justice partners, identify those persons currently in county jail or juvenile hall custody who have less than 60 days remaining on their jail sentence for the purpose of modifying their sentences to permit early release of such persons with or without supervision or to community-based organizations for treatment.
4. With the assistance of justice partners, calendar hearings for youth returning to court supervision from Department of Juvenile Justice following parole consideration for a Welf. & Inst. Code, §1766 hearing.
5. With the assistance of justice partners, determine the nature of supervision violations that will warrant "flash incarceration," for the purpose of drastically reducing or eliminating the use of such an intermediate sanction during the current health crisis.

6. Prioritize arraignments and preliminary hearings for in-custody defendants, and the issuance of restraining orders.
7. Prioritize juvenile dependency detention hearings to ensure they are held within the time required by state and federal law.
8. For routine or non-critical criminal matters, allow liberal use of telephonic or video appearance by counsel and the defendant, and appearance by counsel by use of waivers authorized by Penal Code, § 977. Written waivers without being obtained in open court have been approved if the waiver is in substantial compliance with language specified in section 977, subdivision (b)(1). (*People v. Edwards* (1991) 54 Cal.3d 787, 811; *People v. Robertson* (1989) 48 Cal.3d 18, 62.)

Civil Procedures

1. Suspend all civil trials, hearings, and proceedings for at least 60 days, with the exception of time-sensitive matters, such as restraining orders and urgent dependency, probate, and family matters. Consider whether an emergency order may be needed to address cases reaching 5-year deadlines under Code of Civil Procedure section 583.310.
2. When possible, provide that any urgent matters may be done telephonically, under the general policy encouraging use of telephonic appearances in Code of Civil Procedure section 367.5(a) and California Rule of Court, rule 3.670.

The Judicial Council's entire management team and staff are focused on supporting you, your judicial officers, and court employees. They are moving as quickly as possible to address questions, share information, provide resources, and maintain open lines of communication to facilitate our branch's response.

I am immensely grateful to you and your dedicated employees for your tireless efforts to navigate this storm as you are also trying to help and protect your own families through this challenging time for us all.

Tani G. Cantil-Sakauye
Chief Justice of California