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Via Email

April 1, 2020

Hon. Michael J. Carrozzo
Presiding Judge
Santa Barbara County Superior Court

Sheriff Bill Brown
Santa Barbara County Sheriff's Office

Joyce E. Dudley, Esq.
Santa Barbara County District Attorney

**Re: COVID-19 Public Safety Concerns, Urgent Need for Action in
Santa Barbara County Jail**

Dear Judge Carrozzo, District Attorney Dudley, and Sheriff Brown:

We represent the class of persons incarcerated in the Santa Barbara County Jail ("the Jail") in the federal class action lawsuit, *Murray v. County of Santa Barbara*, Case No. 2:17-cv-08805-GW-JPR (C.D. Cal.). We write to express our continued concern about the health and safety of our clients during the COVID-19 pandemic crisis. We respectfully request that the Court, the District Attorney's office, and the Sheriff's Office take decisive steps to protect people at the Jail by reducing the Jail population in order to allow for social distancing and protect against virus spread, particularly for people with disabilities and those who are at-risk for serious illness from COVID-19.

We are enclosing a report that was completed (*pro bono*) on March 31, 2020 by Scott Allen, M.D., the *Murray* parties' joint expert regarding the provision of medical care at the Jail, along with a resource document he has provided. (**Appendix A**, Supplemental Report of Scott A. Allen, M.D., Regarding COVID-19 Risks in Santa Barbara County Jail & COVID-19 Pandemic Response Plan.)

We are aware of steps being taken to mitigate the risk of transmission of the coronavirus inside the Jail, including enhanced screening for anyone coming into the facility, increased access to and use of soap and cleaning supplies, and public health education regarding handwashing, sanitizing, and social distancing. These safety measures are to be applauded and should continue. The staff working at the Jail are going above and beyond the call of duty to protect detainees and staff. We appreciate and admire all they are doing during this challenging time.

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However, these measures will not be effective absent significant population reduction, particularly to protect those people at greatest risk if they become ill with COVID-19. We understand that Jail healthcare staff have identified *nearly 100 people* currently in custody who are at high risk for serious illness from COVID-19.

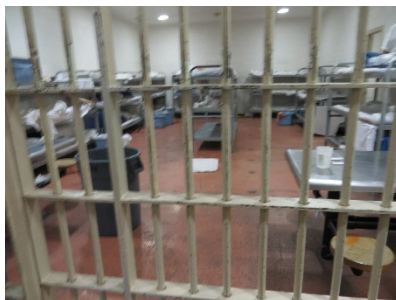
There is Significant Risk of a COVID-19 Outbreak at the Jail

Incarceration is meant to protect public safety. Public safety interests now require significant further reduction of the Jail population to address the enormous risks of a COVID-19 outbreak, which could quickly overwhelm both the Jail's healthcare resources and the County's local hospitals. We understand that the Jail's population is lower than usual, with a census now below 700 people. Yet there are still densely populated housing units, including some two-dozen people in the South Dorm "medical unit."

Photos that DRC has taken of the Jail's housing units show the impossibility of providing for adequate social distancing absent very substantial population reduction, particularly among those at high-risk for serious illness and death.



South Dorm ("Medical Unit")



South Tank ("Mental Health Dorm")



West Dorm

Failure to adequately address the risks of coronavirus spread in the Jail also threatens the community at large, as dozens of custody, healthcare, and other staff interact with the incarcerated population every day, and then return to their homes and neighborhoods. The County has reported that multiple contract workers and Sheriff's deputies at the Jail have already tested positive for COVID-19.

Steps Taken at Other Jails and Prisons to Prevent COVID-19 Outbreaks

COVID-19 is affecting jails and prisons across the state and country, with small outbreaks fast escalating to widespread crises. In New York City, a few coronavirus infections quickly spread, with 167 inmates, 114 correction staff and 23 health workers testing positive as of March 30. Two corrections staff members have died and multiple prisoners have been hospitalized. Sick people now fill the jail's contagious disease unit. *We're Left for Dead': Fears of Virus Catastrophe at Rikers Jail*, N.Y. Times, Mar. 30, 2020, <https://www.nytimes.com/2020/03/30/nyregion/coronavirus-rikers-nyc-jail.html>. The California Department of Corrections and Rehabilitation (CDCR) reports that, as of today, 25 employees and 8 incarcerated people have tested positive for COVID-19.

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<https://www.cdcr.ca.gov/covid19/>. Given the testing shortage, the actual number of infections is likely to be much higher. CDCR has now announced a plan to release 3,500 prisoners in response to the crisis. *California is granting early release to 3,500 inmates*, Mar. 31, 2020, <https://www.latimes.com/california/story/2020-03-31/coronavirus-california-release-3500-inmates-prisons>.

The Sheriff has the power under State law to reduce the Jail's population to address this emergency, as other California counties have recognized. Government Code section 8658 provides:

In any case in which an emergency endangering the lives of inmates of a state, county, or city penal or correctional institution has occurred or is imminent, the person in charge of the institution may remove the inmates from the institution. He shall, if possible, remove them to a safe and convenient place and there confine them as long as may be necessary to avoid the danger, or, if that is not possible, may release them. Such person shall not be held liable, civilly or criminally, for acts performed pursuant to this section.

Other California counties are taking aggressive steps to reduce their jail population. The Orange County presiding judge issued an order on Friday approving the Sheriff's plan to do early releases of prisoners (excepting certain serious crimes). The Court made clear that the Sheriff has broad discretion and authority to release people in the case of an emergency like the one we face today, stating: "The Sheriff has the authority to implement this plan in any manner he sees fit. He has the authority to exceed the parameters of this order if he wishes and the conditions require it." (**Appendix B**, Mar. 27, 2020 Order, Orange County Superior Court.) The Orange County Sheriff is now taking steps to reduce crowding in the jails, over the weekend releasing 130 people earlier than their release dates, with a particular focus on those with higher medical risk because of their age or underlying health conditions. Unfortunately, Orange County's action came until after the virus had reached its jail facilities. *130 inmates released early from Orange County jail system as 5 test positive for COVID-19*, <https://abc7.com/130-inmates-released-early-from-oc-jails-as-5-test-positive-for-covid-19/6065898/>.

In Sacramento County, the court issued an order directing the release of all detainees serving county jail commitments with 60 days or less remaining on their sentence. (**Appendix C**, Mar. 25, 2020 Order, Sacramento County Superior Court.)

The Santa Clara Superior Court issued an order that provided, among other measures, that "all individuals scheduled to surrender to the custody of the Santa Clara County Sheriff between March 17, 2020 and May 15, 2020 will have their surrender date continued by sixty (60) days." (**Appendix D**, Mar. 18, 2020 Order, Santa Clara County Superior Court.)

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Actions to Prevent a COVID-19 Outbreak Crisis in Santa Barbara County Jail

We respectfully ask that Santa Barbara County take immediate steps to address the grave risks a COVID-19 outbreak of at the Jail. The County of Santa Barbara should join other jurisdictions in getting out in front of this crisis, consistent with Dr. Allen's guidance (at p. 5):

I recommend (a) the release of enough people living in the jail to allow for social distancing in all living spaces, and (b) the release of elderly and medically high-risk patients at low risk for violent crime to protect them from the dangers of the pandemic behind bars. These extraordinary measures are justified by real threats posed to public health and safety created by maintaining the current population in settings that have become unsafe for the inmates, staff and surrounding communities during this extraordinary pandemic.

We recognize that people being released from the Jail may require supervision by the County's Probation Department. To free up resources, we suggest that the Probation Department discharge people who have demonstrated compliance with their conditions of supervision, as it is authorized to do by Section 3456 of the California Penal Code and related law. (Notably, Governor Newsom's proposed budget for the next fiscal year includes relevant changes to probation, including reducing probation terms. See <http://www.ebudget.ca.gov/2020-21/pdf/BudgetSummary/PublicSafety.pdf> (at 141).)

We urge you to take the following steps to reduce the danger that COVID-19 poses to people currently incarcerated and to public safety across the community:

1. The Sheriff's Office, in coordination with the Public Health Department and Wellpath (the Jail's health care contractor), should review on an individual basis the population of those incarcerated people who are at elevated risk if they are infected by COVID-19 (*i.e.*, those over sixty years of age and/or those that have underlying medical or disability-related conditions that would make them higher risk), and ensure their release unless there is a serious risk to public safety. County agencies should coordinate efforts to provide for releases to a safe setting that meets individual needs.
2. The Sheriff's Office should, with the coordination and cooperation of the District Attorney, the Public Defender, the Criminal Defense bar, and the courts, identify the population of those incarcerated people who have bails of \$50,000 or lower (suggesting that their incarceration may relate to poverty), and release them on their own recognizance.
3. The Sheriff's Office should, with the coordination and cooperation of the District Attorney, the Public Defender, the Criminal Defense bar, and the courts, identify and release people who have 60 days or less remaining on their sentence.

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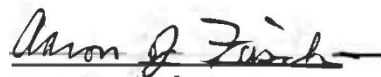
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4. The Sheriff's Office should continue to work to implement adequate social distancing within all areas of the Santa Barbara County Jail, consistent with CDC guidelines, *see* <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>, ensuring that all persons remain at least six feet apart (with rare exceptions).
5. The District Attorney should stipulate to (a) reductions in bail for pretrial detainees held on non-violent charges (as consistent with the guidance of the California Chief Justice Cantil-Sakauye (**Appendix E**, Mar. 20, 2020 Second Advisory on Emergency Relief Measures), and (b) releases consistent with the above guidelines and with adequate community supervision, absent a specific and individualized determination of a public safety risk that outweighs the severe risk to public safety related to the pandemic.
6. The Court, with the coordination and cooperation of the District Attorney, the Public Defender, the Criminal Defense bar, and the Sheriff's Office, should:
 - a) Modify bail practices (including retroactively), such that cash bails are disfavored and issued only in the most limited circumstances.
 - b) Provide that any person with an obligation to surrender to the Santa Barbara County Sheriff in the next sixty days shall have that obligation postponed during this public health emergency.
 - c) Support efforts by the Sheriff's Office and other county agencies to reduce crowded conditions at the Jail and to ensure implementation of adequate social distancing measures across the facility.

We know that people across Santa Barbara County are working tirelessly and bravely to address the challenge of the current moment. We urge the County to take the steps requested in this letter without delay. We are available to discuss these issues with you and County Counsel, and we thank you for your attention and ongoing efforts.

Sincerely,



Aaron Fischer
Disability Rights California



Corene Kendrick
Prison Law Office



Joshua Toll
King & Spalding

cc: Michael Ghizzoni, Amber Holderness, Michelle Montez, Santa Barbara County Counsel
Tanja Heitman, Probation Department
Tracy Macuga, Santa Barbara County Public Defender

Encls.

Appendix A

SUPPLEMENTAL REPORT OF SCOTT A. ALLEN, MD REGARDING COVID-19 RISKS IN SANTA BARBARA COUNTY JAIL

March 31, 2020

This supplemental report is prepared in response to a request by Plaintiff's counsel citing imminent threats to individuals incarcerated in the Santa Barbara County Jail posed by the COVID-19 pandemic.

1. I am a physician, board certified in internal medicine, with extensive experience in correctional and detention health care. I am a Professor Emeritus of Medicine, a former Associate Dean of Academic Affairs and former Chair of the Department of Internal Medicine at the University of California Riverside School of Medicine. From 1997 to 2004, I was a full-time correctional physician for the Rhode Island Department of Corrections; for the final three years, I served as the State Medical Program Director. I have published over 25 peer-reviewed papers in academic journals related to prison health care and am a former Associate Editor of the International Journal of Prisoner Health Care. I have consulted on detention health issues both domestically and internationally for the Open Society Institute and the International Committee of the Red Cross, among others. I have worked with the Institute of Medicine on several workshops related to detainee healthcare and serve as a medical advisor to Physicians for Human Rights. I am the co-founder and co-director of the Center for Prisoner Health and Human Rights at Brown University (www.prisonerhealth.org), and a former Co-Investigator of the University of California Criminal Justice and Health Consortium. I am also the founder and medical director of the Access Clinic, a primary care medical home to adults with developmental disabilities based at the Riverside County Hospital (RUHSMC). I am the court appointed monitor for the consent decree in litigation involving medical care at Riverside County Jails (*Grey v. Riverside*).
2. In 2017 I completed an inspection of the Santa Barbara County Jail as a jointly selected neutral expert and presented my findings to the County in a written report. Among the findings, that report documented overcrowding and poor hygiene and environmental health conditions.
3. We are currently in the middle of an unprecedented global pandemic involving a novel corona virus known as COVID-19. There is no vaccine for COVID-19. There is no proven treatment other than supportive care for COVID-19. COVID-19 is easily transmitted from person to person by droplet or aerosol spread. As the virus is novel, the vast majority of humanity has no immunity to this virus.
4. Based on early data from testing, 80% of people infected with COVID-19 will have mild or no disease, 20% will be sick enough to require hospitalization and 5% of the total will require ICU level care. We also know that those rates will be much higher for elderly and those with chronic illness such as respiratory disease, heart disease, and hypertension.

The overall case-fatality rate for those infected is estimated to be between 0.2% - 3% making is up to three times more deadly than influenza virus. The death rate is highest for those over age 60, those with chronic diseases and men.

https://wwwnc.cdc.gov/eid/article/26/6/20-0320_article

5. Worldwide there are over 850,000 confirmed cases resulting in over 41,000 deaths. https://www.washingtonpost.com/graphics/2020/world/mapping-spread-new-coronavirus/?itid=sf_coronavirus According to the Centers for Disease Control there are over 163,539 confirmed COVID-19 cases in the United States in the U.S. resulting in over 2860 deaths to date. <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>. Those numbers are increasing.
6. Santa Barbara County has reported 99 COVID-19 cases and no deaths to date. <https://www.latimes.com/projects/california-coronavirus-cases-tracking-outbreak/>
7. COVID-19 is affecting other jails and prisons as well including an outbreak reported at Rikers Island with 21 inmates and 17 employees testing positive for the virus. <https://www.nbcnewyork.com/news/coronavirus/21-inmates-17-employees-test-positive-for-covid-19-on-rikers-island-officials/2338242/>. Dozens of inmates have been infected in Louisiana resulting in one inmate death and the hospitalization of a correctional officer so far. https://www.washingtonpost.com/national/an-explosion-of-coronavirus-cases-cripples-a-federal-prison-in-louisiana/2020/03/29/75a465c0-71d5-11ea-85cb-8670579b863d_story.html The California Department of Corrections and Rehabilitation (CDCR) reports that so far five employees and one incarcerated person have tested positive for COVID-19. <https://www.cdcr.ca.gov/covid19/> The actual number of infections is likely to be higher due to the testing shortage. Riverside County Jail has now reported its first inmate infection and two deputy infections with COVID-19. <https://www.pe.com/2020/03/28/first-inmate-at-riverside-county-jail-and-two-more-deputies-test-positive-for-coronavirus/>
8. One of the risks of incarcerating individuals in congregant settings such as jails is the high risk of rapid spread of infectious diseases. Although much is still unknown, the case-fatality rate (number of infected patients who will die from the disease) and rate of spread for COVID-19 appears to be as high or higher than that for influenza or varicella (chicken pox).
9. Traditional methods employed by jails and prisons to slow or prevent the spread of infectious diseases will not work for COVID-19 because there is no rapid test and current testing is in limited supply and most individuals who are infectious are without symptoms early on in the process (for up to two weeks). Options for medical isolation of COVID-19 cases are limited and vary depending on the type and size of facility, as well as the current level of available capacity, which is partly based on medical isolation needs for other conditions. <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html> Facilities

that are at or near full capacity will lack the flexibility required to successfully cohort or isolate individuals or groups as such procedures require spare capacity to allow for flexible housing.

10. A real threat to all healthcare systems, including Santa Barbara, is the threat of a large number of people getting sick at the same time or within a short period. Rapid spread through a jail would create that very scenario.
11. Because COVID-19 can spread so quickly, those who contract COVID-19 with symptoms that require medical intervention will need to be treated at local hospitals, thus increasing the risk of infection to the public at large and overwhelming treatment facilities. As local hospital systems become overwhelmed by the patient flow from jail outbreaks, precious health resources will be less available for people in the community, including community members affected by coronavirus, or simply those presenting with the usual illnesses (heart attacks, accidents, etc.).
12. As local hospital systems become overwhelmed by the patient flow from jail outbreaks, precious health resources will be less available for people in the community. To be more explicit, a detention center with a rapid outbreak could result in multiple detainees—five, ten or more—being sent to the local community hospital where there may only be six or eight ventilators over a very short period. As they fill up and overwhelm the ventilator resources, those ventilators are unavailable when the infection inevitably is carried by staff to the community and are also unavailable for all the usual critical illnesses (heart attacks, trauma, etc.). In the alternate scenario where detainees are released from high risk congregate settings, the tinderbox scenario of a large cohort of people getting sick all at once is less likely to occur, and the peak volume of patients hitting the community hospital would level out. In the first scenario, many people from the jail *and the community* die unnecessarily for want of a ventilator. In the latter, survival is maximized as the local mass outbreak scenario is averted.
13. “Social distancing” is essential to slow the spread of the coronavirus to minimize the risk of infection and to try to reduce the number of those needing medical treatment from the already overwhelmed and inadequately prepared health care providers and facilities. However, social distancing is an oxymoron in congregate settings, which because of the concentration of people in a close area with limited options for creating distance between detainees, are at very high risk for an outbreak of infectious disease.
14. While all congregate settings (cruise ships, nursing homes, college dorms) carry high risk of rapid spread of infection, jails carry an even higher risk because jail settings have even closer living quarters. In particular, Santa Barbara County Jails have housing units where multiple detainees share bunk areas, dining facilities and bathroom facilities. In addition my 2017 report found problems with hygiene and environmental health.

15. While the CDC has provided interim guidance for correctional facilities in reducing the risks posed by COVID-19 <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html> experts in the correctional field have increasingly called for release of individuals who do not pose a significant and immediate risk to public safety, especially those at highest risk of complications of infection such as age over 60 and chronic diseases including heart disease, hypertension and pulmonary disease.
<https://www.washingtonpost.com/opinions/2020/03/17/we-must-release-prisoners-lesser-spread-coronavirus/>
16. A COVID-19 plan for correctional systems has been co-developed by Dr. Newton Kendig, former Medical Director of the Federal Bureau of Prisons. A copy of the plan is attached. As I am sensitive to the fact that developing a plan to address the threat of COVID-19 from scratch would be a challenge during this crisis, I have provided this well thought out plan so that it may serve as a model for Santa Barbara County. It could potentially be adopted with minimal to no modification.
17. In the preparation phase, that plan calls for Phase I Preparations:
Emphasis is placed on coordinating with local law enforcement & court officials to reduce crowding:
 - a. alternatives to in-person court appearances
 - b. maximize use of existing policies for alternatives to incarceration
 - c. expedite implementation of compassionate release policies
 - d. explore strategies to reduce new intakes to the correctional facility
 - e. explore strategies for releasing inmates at low risk for violent crime –particularly those with risk factors for severe COVID-19
18. High priority for consideration for release should be given to patients with chronic diseases. All of these individuals are at higher risk of serious illness should they become infected. They may be easily identified by the medical program who should already be tracking these individuals. The number of inmates over age 60 – another high-risk group – is not immediately available but could be easily pulled from the inmate master list. They are also at high risk of serious illness if they become infected.
19. The attached mitigation plan involves multiple strategies to slow the spread of COVID-19 in facilities, and all measures should be employed. However, reduction of the population, particularly reducing those at greatest risk for serious illness, is likely to be the most effective strategy.
20. Incarceration is justified by protecting public safety. Public safety risk now must consider considerable risk to the public safety created by the possibility of a jail COVID-19 outbreak that might overwhelm local hospitals over a short period of time.

21. Therefore, I recommend (a) the release of enough people living in the jail to allow for social distancing in all living spaces, and (b) the release of elderly and *medically* high-risk patients *at low risk for violent crime* to protect them from the dangers of the pandemic behind bars. These extraordinary measures are justified by real threats posed to public health and safety created by maintaining the current population in settings that have become unsafe for the inmates, staff and surrounding communities during this extraordinary pandemic.
22. I also recommend the County to provide, in cases of public health emergencies, ample free soap for personal use, cleaning supplies to sanitize cells and common living areas, and public health education regarding handwashing, sanitizing, and social distancing. These recommendations are consistent with both CDC recommendation and detailed recommendations (attached to this report).

A handwritten signature in black ink, appearing to read "Scott A. Allen".

Scott A. Allen, MD
Riverside, CA

Appendix B

MAR 27 2020

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

DAVID H. YAMASAKI, Clerk of the Court

BY  DEPUTY

IN THE MATTER OF THE APPLICATION
OF:

ORANGE COUNTY SHERIFF'S
DEPARTMENT,

Petitioner,

For an order authorizing release of inmates
pursuant to Government Code section 8658

**RULING RE: AUTHORIZING
RELEASE OF SENTENCED INMATES
PURSUANT TO GOVERNMENT CODE
SECTION 8658**

The Court finds that inmates in the Orange County Jail live, work, eat, and recreate within a close environment in which it is not feasible to maintain six (6) feet of distance between each inmate. This heightens the potential for COVID-19 to spread once introduced. There is no opposition from any stakeholder, including from the District Attorney, the Public Defender, the Orange County Bar Association (add any other.)

The Court issues this ruling for the purposes of clarifying the Sheriff's authority in this time of crisis. Often the law is opaque and apparently inconsistent. It is perfectly appropriate for the Orange County Sheriff-Coroner's Office to seek orders which may clarify its responsibilities and powers under existing law.

1. Government Code section 8658 Provides the Sheriff with Complete Authority Over the Jail; Therefore, No Authorizing Order is Needed

Government Code section 8658 provides:

In any case in which an emergency endangering the lives of inmates of a state, county, or city penal or correctional institution has occurred or is imminent, the person in charge of the institution may remove the inmates from the institution. He shall, if possible, remove

them to a safe and convenient place and there confine them as long as may be necessary to avoid the danger, or, if that is not possible, may release them. Such person shall not be held liable, civilly or criminally, for acts performed pursuant to this section.

The statute was enacted in 1970 as part of the California Emergency Services Act, which established statewide emergency standards in the event of natural, manmade, or state-of-war emergencies that put in peril the lives, property, and resources of California citizens. (Gov. Code, §§ 8550, et seq.) For example, it granted the Governor the authority to proclaim an emergency, to suspend statutes, to commandeer private property or personnel, and to make expenditures from available funds. The Act also made it a crime to refuse or willfully neglect to obey emergency orders or regulations. It also contained a series of statutes providing immunity to various agencies for claims based on the exercise, performance, failure, or discretionary choice made under the Act's authority.

The statute in question here, Government Code section 8658, falls within Article 17, titled "Privileges and Immunities." It provides authority for "the person in charge of the [correctional] institution" to move or release inmates where an emergency endangers the lives of the inmates, as well as immunity from civil or criminal liability to that person for acts performed pursuant to that authority. The person in charge of Orange County Jail is the Orange County Sheriff. (See Gov. Code, § 26605 [notwithstanding any other provision of law, "the sheriff shall take charge of and be the sole and exclusive authority to keep the county jail and the prisoners in it . . ."].) This provision provides the Sheriff with the authority to remove or release inmates.

The statute does not require the Court's authorization for the Sheriff to move or release inmates, nor does it authorize the Court to make an order releasing inmates or allowing the Sheriff to release inmates. The statutory language is clear, and there are no cases construing the language otherwise. It appears that the Court's authority with regard to authorizing the removal of inmates from the jail is limited to two statutes: Penal Code sections 4012 (allowing the Court to designate a new place of confinement when contagious disease breaks out in or near the jail) and 4024.1 (allowing the Court, upon application of the Sheriff, to authorize the acceleration of

the release of inmates by a maximum of 30 days where the actual inmate count exceeds the actual bed capacity of a county jail).

2. The Proposed Order, Not Opposed By Any Justice Partner, Is Entirely Reasonable

The Sheriff Coroner seeks an order that, for the duration of the state of emergency in Orange County proclaimed by the Orange County Board of Supervisors on February 26, 2020 and the Governor of the State of California on March 4, 2020, each in response to the COVID-19 (coronavirus) pandemic, the ORANGE COUNTY SHERIFF'S DEPARTMENT may release sentenced inmates with less than sixty (60) days left on their sentence. This does not include any inmate with a prior conviction of, or serving a sentence for, any of the following crimes under the California Penal Code:

- (1) A serious felony, as defined in subdivision (c) of Section 1192.7, or a violent felony, as defined in subdivision (c) of Section 667.5, but not including a violation of subdivision (a) of Section 460 (residential burglary);
- (2) A violation of Section 136.1 where punishment is imposed pursuant to subdivision (c) of Section 136.1, Section 262, 273.5, or 422 where the offense is punished as a felony, or Section 646.9;
- (3) A violation of paragraph (1) of subdivision (e) of Section 243;
- (4) A violation of Section 273.6 if the detained person made threats to kill or harm, has engaged in violence against, or has gone to the residence or workplace of, the protected party;
- (5) Solicitation to commit murder Section 653f;
- (6) Felony assault by means of force likely to produce great bodily injury in violation of paragraph (4) of subdivision (a) of Section 245;
- (7) False imprisonment in violation of Section 210.5;
- (8) Felony domestic violence resulting in a traumatic condition in violation of Section 273.5;

- (9) Felony use of force or threats against a witness or victim of a crime in violation of Section 140;
- (10) Felony resisting a peace officer and causing death or serious injury in violation of Section 148.10;
- (11) A felony hate crime punishable pursuant to Section 422.7;
- (12) Felony elder or dependent adult abuse in violation of subdivision (b) of Section 368;
- (13) Sexual penetration in violation of subdivision (b), (d) or (e) of Section 289;
- (14) Sodomy in violation of subdivision (f), (g), or (i) of Section 286;
- (15) Oral copulation in violation of subdivision (f), (g), or (i) of Section 288a;
- (16) Abduction of a minor for purposes of prostitution in violation of Section 267;
- (17) Human trafficking in violation of subdivision (a), (b), or (c) of Section 236.1;
- (18) Child abuse in violation of Section 273ab;
- (19) Possessing, exploding, or igniting a destructive device in violation of Section 18740.

This order, not opposed by any stakeholder or justice partner, is entirely reasonable and provides guidance to the Sheriff. In fact, the letter signed by Chief Justice Tani Cantil-Sakayue directed the trial courts to seek a collaborative plan for the release of inmates who are within 60 days of their sentence. This appears to be a start, or perhaps a finish, depending on the conditions.

The Sheriff has the authority to implement this plan in any manner he sees fit. He has the authority to exceed the parameters of this order if he wishes and the conditions require it.

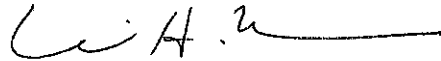
3. This Order is Completely Advisory and Non-Binding on the Sheriff-Coroner

The court must emphasize that, should the court sign this order, it is only advisory. The court urges that the stake holders and justice partners continue to meet and confer to provide guidance to the Sheriff-Coroner's office for the early release of inmates to deal with this threat to the inmates, court personnel, and the public.

4. All Justice Partners Should Try to Address Bail Issues

The court notes that the District Attorney has objected to the court reducing its bail to zero on minor offenses as suggested by the Chief Justice. The setting of bail is in the province of the court. The court will continue to have this dialogue but plans to place this issue before the bench for a vote.

DATED: 3/27/20

A handwritten signature in black ink, appearing to read "K. H. Nakamura", written over a horizontal line.

Kirk H. Nakamura

Presiding Judge of the Superior Court

Appendix C

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

**ORDER OF THE
SACRAMENTO SUPERIOR COURT**

**ORDER AUTHORIZING SACRAMENTO
COUNTY SHERIFF'S DEPARTMENT TO
GRANT RELEASE**

ORDER

GOOD CAUSE APPEARING, AND BY AGREEMENT OF THE SACRAMENTO
COUNTY DISTRICT ATTORNEY'S OFFICE, THE SACRAMENTO COUNTY PUBLIC
DEFENDER'S OFFICE AND THE SACRAMENTO CONFLICT CRIMINAL DEFENDER,
IT IS HEREBY ORDERED:

1) Because the parties agree that it is in the best interest of public health to
reduce the population of the Sacramento County Jail System, and pursuant to Penal
Code section 4004, the court finds good cause to order the Sacramento County Sheriff
to utilize the authority granted in California Government Code section 8658 and Health
and Safety Code sections 101029 and 120155, to release all confined persons identified

1 and discussed herein who are serving county jail commitments with 60 actual days or
2 less remaining on their sentence, condition of confinement, or other custody
3 requirement from the date of this Order (March 25, 2020). This Order includes those
4 persons with a projected release date from present to May 24, 2020. The Sacramento
5 County Sheriff is directed to release qualifying persons within the parameters of this
6 order forthwith, or at the earliest possible time but no later than March 30, 2020.

7 2) This order shall not be construed to include persons confined pursuant to a
8 county jail prison commitment, nor persons currently doing alternative sentencing
9 programming with the Sheriff's Department, nor persons whose offense includes one or
10 more of the following categories. Specifically,

11 a. No inmate serving time for a domestic violence related offense or
12 offense involving a victim of domestic violence as defined in Penal Code
13 section 13700, including but not limited to Penal Code sections 273.5,
14 273.6, 243(e)(1), 422, and 646.9 shall be released by this order.

15 b. No inmate serving time for driving under the influence of alcohol or
16 drugs pursuant to Vehicle Code sections 23152 and 23153 shall be released
17 by this order.

18 c. No inmate serving time for an offense that requires registration as a
19 sex offender pursuant to Penal Code section 290 shall be released by this
20 order.

21 The list of specific inmates ordered for release is attached to this Order.

22 3) If the released inmate has 10 actual days or less remaining to serve at the
23 time of their release the sentence shall be deemed completed and the Sheriff shall make
24 that entry into the court/sheriff computer system.
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1 4) If the inmate has between 11 and 60 actual days of confinement remaining
2 at the time of release, the person shall be referred to the Sheriff's Work Release
3 Program for potential placement into an appropriate program. The inmate will be
4 required to complete the remainder of their sentence in one of these programs or return
5 to custody at a later date as ordered below.

6 5) If an inmate has between 11 and actual 30 days remaining at the time of
7 release, then person shall complete that sentence in a release program or in a return to
8 custody as ordered below in paragraphs (7) and (8).

9 6) If an inmate has more than 30 actual days remaining (31-60 actual days),
10 the person shall be deemed time-served after completing 30 actual days of the sentence
11 on a work release program or a return to custody as ordered below in paragraphs (7)
12 and (8). No one who has between 31 and 60 actual days remaining to serve will be
13 required to serve more than 30 actual days.

14 7) It is ordered that all released persons will have until August 28, 2020 to
15 sign up for Sheriff's Work Release.

16 8) It is order that any person released by this order who does not sign up for
17 Sheriff's Work Release or chooses not to participate in a Sheriff's Work Release
18 program shall turn themselves in to the Rio Cosumnes Correctional Facility by Friday at
19 6:00 p.m., December 4, 2020, to serve the remainder of their sentence, not to exceed
20 the above-noted 30 actual days. Persons who fail to obey the conditions of this Order
21 shall be subject to immediate re-arrest by way of bench warrant or warrant issued by
22 the Sheriff.

23
24 DATED: March 23, 2020

25
26 THE HONORABLE MICHAEL G. BOWMAN
27 ASSISTANT PRESIDING JUDGE
28



Appendix D

1 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
2 **IN AND FOR THE COUNTY OF SANTA CLARA**

3
4 **STANDING ORDER OF THE COURT**
5 **DEFERRING SENTENCE SURRENDER DATES AND**
6 **PERMITTING SHERIFF TO AUTHORIZE CREDIT FOR**
7 **PARTICIPATION IN THE SHERIFF WORK PROGRAM**

8 **To the Sheriff of Santa Clara County:**

- 9 1. The County of Santa Clara is amid a declared public health emergency. The Director of
10 Emergency Services proclaimed a local emergency and the County Public Health
11 Officer proclaimed a local health emergency on February 3, 2020, based on conditions
12 of extreme peril and the imminent and proximate threat to public health relating to
13 Coronavirus Disease 2019 (COVID-19).
- 14 2. The inmates in the County Jail and the County employees who provide for the safety,
15 security, and health of those inmates are at a particular risk to COVID-19 due to the
16 confined nature of the jail environment.
- 17 3. Santa Clara Valley Health System, Adult Custody Health Division Medical Director Dr.
18 Alexander Chyorny, in collaboration the Public Health Officer, has advised the criminal
19 justice partners that reducing the jail population is necessary to implement public health
20 measures.
- 21 4. On March 16, 2020, this court suspended all non-essential functions for three weeks or
22 until such order is lifted. This order was made in response to the County of Santa
23 Clara's "shelter in place" orders, effective Tuesday, March 17, 2020 at 12:01 a.m.
- 24 5. Reducing the jail population is a critical preventative measure for inmates and staff.
25 Further, the County is seeking to avoid congregating individuals at the Re-Entry Center
26 as part of the Sheriff's Work Program.
- 27
28

1 6. Based on the urgency of the health crisis and the stipulation between the People and the
2 defense at a hearing held on March 17, 2020 at 1:30 p.m. in Department 41, the court
3 makes the following orders:

4 a. Effective immediately, all individuals scheduled to surrender to the custody of
5 the Santa Clara County Sheriff between March 17, 2020 and May 15, 2020 will
6 have their surrender date continued by sixty (60) days.

7 b. Effectively immediately, all individuals who are participating in the Sheriff's
8 Work Program shall, at the discretion of the Sheriff's Office, receive credit for
9 the Sheriff's Work Program until May 15, 2020, despite not being able to
10 participate in the program.

11 IT IS SO ORDERED.

12
13 Eric S. Geffon 3/18/2020

14 HON. ERIC S. GEFFON
15 JUDGE OF THE SUPERIOR COURT
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Appendix E

California Chief Justice Issues Second Advisory on Emergency Relief Measures

March 20, 2020

Contact: Peter Allen | 415-865-7740

California Chief Justice Tani Cantil-Sakauye issued new guidance to the state's superior courts on Friday to mitigate some of the health risks to judicial officers, court staff, and court users during the COVID-19 pandemic.

In California, unlike other states, presiding judges of county superior courts may petition the Chief Justice—as chair of the Judicial Council—for an emergency order. (So far, the Chief Justice has signed emergency orders for nearly all of California's 58 counties, available to the public [here](#)).

Under Gov. Gavin Newsom's executive order to shelter in place, courts are considered "essential services" that must still provide services to the public.

"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," Cantil-Sakauye said.

In Friday's advisory, Cantil-Sakauye urged court officials to consider the following measures. "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," Cantil-Sakauye said.

In criminal cases:

Lower bail amounts significantly for the duration of the coronavirus emergency, including lowering the bail amount to \$0 for many lower level offenses.

Consider a defendant's existing health conditions, and conditions existing at the anticipated place of confinement, in setting conditions of custody for adult or juvenile defendants.

Identify detainees with less than 60 days in custody to permit early release, with or without supervision or community-based treatment.

Determine the nature of supervision violations that will warrant detention in county jail, or "flash incarceration," to drastically reduce or eliminate its use during the current health crisis.

Prioritize arraignments and preliminary hearings for in-custody defendants, and the issuance of restraining orders.

Prioritize juvenile dependency detention hearings to ensure they are held within the time required by state and federal law.

Allow liberal use of telephone or video appearance by counsel and defendant for routine or non-critical criminal matters.

In civil cases:

Suspend all civil trials and hearings for at least 60 days, with the exception of time-sensitive matters, such as restraining orders and urgent dependency, probate, and family matters.

When possible, provide that any urgent matters may be done telephonically.

See Chief Justice Tani Cantil-Sakauye's advisory below, sent to all county superior court presiding judges and court executive officers on Friday:

To: Presiding Judges and Court Executive Officers of the California Courts

Dear Judicial Branch Colleagues:

CALIFORNIA COURTS
THE JUDICIAL BRANCH OF CALIFORNIA

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.

CALIFORNIA COURTS
THE JUDICIAL BRANCH OF CALIFORNIA
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.

CALIFORNIA COURTS
THE JUDICIAL BRANCH OF CALIFORNIA
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.

Related



California Chief Justice Issues Guidance to Expedite Court Emergency Orders

March 16, 2020



Court Emergency Orders

March 23, 2020