



Fighting for justice since 1973

California Attorneys for Criminal Justice

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www.cacj.org

1 March 13, 2020

Re: A Call to Action from CACJ

Dear Justice Cantil-Sakauye,

As President of California Attorneys for Criminal Justice, statewide association of criminal defense attorneys in private practice and public defenders, I write you to consider taking immediate action to address the highly dense and susceptible population in our local county jails, especially those who are there simply because they cannot afford high bail amounts imposed under our current bail laws.

As you know, the State of California and local authorities have initiated actions to contain and minimize the already devastating effects of COVID-19. In the coming weeks experts and modeling predict an exponential increase in the number of positive tests and risk to Californians. One possible scenario, as I hope you all have already begun to explore, is that our court operations will need to be shut down due to positive tests among court personnel or other related COVID-19 reasons. If this occurs with little or no notice, our clients awaiting their upcoming pre-trial dates will not have access to court hearings to expedite their due process rights, or to have their bail amounts reconsidered and released from custody. As a result, they will languish in county jails without access to our judicial system and face a high potential for COVID-19 outbreak. Court operations are likely considered an essential service, but all contingencies and preparations must be in place if these operations are reduced or are required to grind to a halt.

Local jails are ripe for a breakout in COVID-19, and you must consider immediate actions to address this population. Keep in mind that most of those in county jails are there pre-trial/conviction, or serving short incarceration terms for non-violent offenses, which is why they are not transferred to state prison facilities.

CACJ believes you must take immediate action. It is for you and you alone to communicate roles and responsibilities to all participants in the fair administration of justice and in the protection of public health. Judges, attorneys, court staff and security must have immediate guidance in what measures you will authorize to alleviate social contacts during this state of pandemic emergency.

On March 5, 2020, Governor Newsom proclaimed a state of emergency “deploying every level of government to help identify cases and slow the spread of this coronavirus” (COVID-19). “This emergency proclamation will help the state further prepare our communities and our health care system in the event it spreads more broadly.” This action by the Governor triggers Government Code section 68115 which allows the Chief Justice to issue emergency orders that will provide authority for the courts to take necessary and appropriate actions.

Urgently needed judicial responses are being delayed and will continue to remain on hold until you to make necessary Orders. Your Orders are desperately needed both to prevent the spread of COVID-19 and to enable the Presiding Judges in all 58 Counties to respond to localized developments in the pandemic without inhibition or delay. Absent an immediate exercise of your authority, our judges will remain unable to issue consistent, meaningful responses or to avert the drastic spread of this deadly contagion.

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Inmates in jail and prison are in a precarious position. Once the disease reaches a facility with so many trapped in close quarters it will be unstoppable. Experts tell us that COVID-19 will thrive in the jails and that the fewer inmates that are concentrated there, the less the overall danger to the population at large.

CACJ strongly recommends that you issue an emergency Order and / or Authorize the Presiding Judges in all 58 Counties to immediately:

- For those pre-trial individuals who are out of custody, extend all time restrictions for preliminary hearings, motions, trial dates etc.
- Provide the option for video arraignment and telephonic attorney appearances in all but the most critical cases. Particularly in highly populated areas and courts.
 - For those in pre-trial custody for non-violent offenses who cannot afford the currently imposed bail amount, grant release on own recognizance (OR) and other non-incarceration conditions.
 - For those on no-bail probation violations awaiting their hearing dates, grant release on own recognizance (OR) if the violation is non-serious, non-violent, and/or the underlying case is non-serious/non-violent.
 - For those who remain in custody, allow non-written 977 appearances on felonies upon request.

These are just some ideas. CACJ stands ready to provide further recommendations or to provide feedback as your justice partner. Delays in taking actions only helps to give COVID-19 greater opportunity to spread.

CACJ members want you to know, and I personally assure you that we share the interest of the judiciary in fairly resolving disputes that arise under the law that the law may be interpreted and applied consistently, impartially, and independently to protect the rights and liberties guaranteed by the Constitutions of California and the United States.

Further short-term strategies necessary to cope with the isolation, the quarantines and the unavailability of court staff during this pandemic will continue to be devised and made available by CACJ until the emergency is over. CACJ sincerely wishes to lend our assistance to you in this time of crisis. If there is anything whatsoever that we can do to help the courts, please do not hesitate to call upon us.

Cordially,

ERIC H. SCHWEITZER
CACJ PRESIDENT – 2020

Cc: Assemblymembers Reginald Jones-Sawyer Sr., Chair Public Safety Committee and Mark Stone, Chair of Judiciary Committee
Senator Nancy Skinner, Chair Judiciary Committee, and Public Safety Committee