



Superior Court of California County of Solano

Chambers of
WILLIAM J. PENDERGAST III, Judge
Department Eleven

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MEMORANDUM



DATE: April 10, 2020

TO: Criminal Bench, Criminal Judicial Assistants, Criminal Division Operations, Courtroom Clerk Supervisors, District Attorney's Office, Public Defender's Office, Alternate Public Defender's Office, Laura Petty, Esq. for the Barristers, Sgt. Daniel "Cully" Pratt, Deputy Adrian Garcia, Vincent Go – Parole Agent Supervisor, Dana Vaughn, Esq. – Solano County Counsel

FROM: Criminal Supervising Judge Pendergast

RE: Emergency Rule 4 – Emergency Bail Schedule

This memo is intended as guidance for our Criminal Courts and Justice Partners during the term of the recently adopted statewide Emergency Rule 4 – Emergency Bail Schedule.

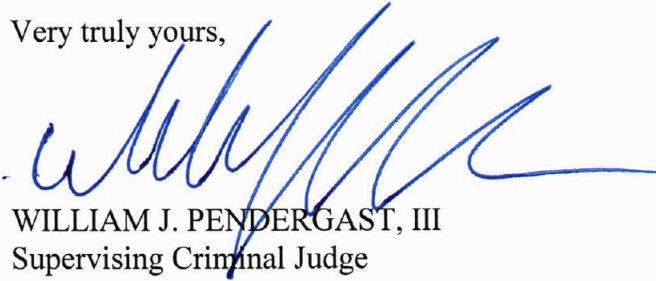
Effective April 10, 2020:

1. The Solano County Superior Court shall follow the bail schedule as outlined in Emergency Rule 4 immediately (see Attachment A).
2. The Solano County Sheriff shall apply the bail schedule as outlined in Emergency Rule 4 for all new arrests that are booked into the jail.
3. The Solano County Superior Court is reviewing all 371 present pre-trial detainees and will set hearings for those who qualify for \$0 bail under the Emergency Bail Schedule as soon as possible.

4. A copy of a memo prepared by Judge Couzens is attached hereto for your reference. This memo is not binding law, but parties with questions about the implementation of Emergency Rule 4 are directed to this memo (see Attachment B).

Finally, these provisions are subject to change and modification as the circumstances dictate.

Very truly yours,



WILLIAM J. PENDERGAST, III
Supervising Criminal Judge

MEMORANDUM

FROM: J. RICHARD COUZENS
Judge of the Placer County Superior Court (Ret.)

DATED: April 9, 2020

RE: EMERGENCY RULE 4 – EMERGENCY STATEWIDE BAIL SCHEDULE

On April 6, 2020, as a result of the state of emergency related to the COVID-19 pandemic, the California Judicial Council enacted Emergency Rule 4, establishing a statewide emergency bail schedule for designated criminal offenses. (See Attachment A for the full rule.) The purpose of this memorandum is to assist in the application of the new emergency bail schedule.

I. Effect of the Judicial Council action

The Judicial Council has created a statewide emergency bail schedule applicable to all felonies and misdemeanors. Specifically, for designated crimes, the dollar amount of required bail has been reduced to \$0 such that the defendant may be released from custody without the payment of any form of monetary bail. (It is important to distinguish \$0 bail from “no bail” where the defendant may not be released on bail; see discussion of denial of bail, *infra*.) However, with limited exceptions, the emergency rule does not change any of the traditional bail procedures or the ability of a court to exercise discretion related to the setting of bail. For example, nothing in the emergency schedule has eliminated the ability of courts to set bail in an individual case that departs from the schedule if such a departure is necessary to assure the appearance of the defendant and protect public safety.

Departures from the schedule should be rare and only as absolutely necessary to assure the defendant’s appearance or protect the public. Courts must be mindful of the reason why the Judicial Council created the emergency schedule: to protect the health and safety of inmates, court and law enforcement personnel, and the public. An increase in bail should only be granted upon good cause shown in the individual case.

II. Application of the new schedule

The new schedule becomes effective at 5:00 p.m. on April 13, 2020. (Emergency rule 4, subd. (b).) It is incumbent on the superior court in each county to revise the county misdemeanor and felony bail schedule in accordance with the new rule and to provide the administrator of any custody facility with the revised schedule. Subdivisions (b)(1) and (b)(2) specify the schedule will apply to all persons currently in custody and all persons thereafter arrested for criminal offenses in the county. Note the emergency rule applies to “every *accused* person” arrested or held in custody. (Emergency rule 4, subd. (b)(1) and (2); emphasis added.) The reference to the “accused” limits the rule to cases that have “open” crimes or supervision violations. It likely has no application to a person who has been *convicted* of a criminal offense by plea or trial and is awaiting sentencing.

Likely there is little issue about the application of the schedule under subdivision (b)(1) to persons arrested on new charges – the custody facility will apply the new schedule as it has with past schedules. The application of the new schedule to persons in custody as of 5:00 p.m., April 13, 2020, is more challenging.

A. Application to persons currently in custody

Emergency rule 4, subdivision (b)(2), applies the new bail schedule to “every accused person held in pretrial custody.” Accordingly, unless a person is charged with an excluded offense, regardless of the amount of bail previously set, the person is entitled to a resetting of bail at \$0. The mechanics of the process to reset the bail is not dictated by the emergency rule but will largely depend on the technology available in each county and the level of cooperation between the justice partners.

Persons in custody, but not arraigned

For persons in custody as of the effective date and time who have not yet been arraigned, and where a judicial officer has not otherwise set bail, it will be the responsibility of the custodial officer to re-set the bail in accordance with the emergency schedule, as if the new schedule had been in effect at the time of arrest and booking.

Persons in custody, previously arraigned

Because bail is addressed and set by the court at arraignment, it is the responsibility of the court to order the resetting of bail for persons who remain in custody after arraignment. It will be necessary for the court to issue either an individual or collective order resetting the bail for eligible defendants. While nothing in the new rule requires a formal bail review hearing in every case being considered for bail reduction, whatever process is adopted should include a means of giving notice to

all parties and counsel, an opportunity to comment on any proposed order granting or denying resetting of bail, and an order to the custodial officer regarding any change in the amount of bail.

Two methods have been suggested for dealing with this process:

1. One county has suggested that the defense bar review its pending cases to determine whether a particular client is eligible for bail reduction. The list is then submitted to the court and counsel for comment.
2. One county has requested the sheriff to provide the court with a list of all persons in pretrial custody. The court then reviewed the cases for eligibility, tentatively dividing the persons into two categories: those persons presumptively eligible for bail reduction and those persons presumptively ineligible for bail reduction. The two lists are then submitted to counsel for comment. If within a specified period there is no objection to the status of a particular inmate, the court will issue either an individual or collective order as indicated in the tentative decision. Any objections or comments are exchanged between the court and counsel; the court enters its ruling and order to the sheriff. The entire process is handled electronically.

III. Setting of bail

A. The amount of bail, generally

Except for the offenses specifically excepted in the rule, the scheduled bail for all felony and misdemeanors is set at \$0. (Emergency rule 4, subd. (c).) Although the emergency rule does not reference bail setting for enhancements to eligible offenses, unless the enhancement creates a serious or violent felony, likely the enhancement will not have a separate bail setting from the base crime. (See discussion, *infra*, for serious and violent felonies.) The effect of the change in the amount of bail is to permit the release of a qualified defendant without the need to post any cash or property bail, or bail bond. The setting of \$0 bail is to be distinguished from the "no bail" status of persons who are held in custody without the ability to post any form of bail. (See discussion of denial of bail, *infra*.)

Whether an arrested person qualifies for the reduced bail under the emergency schedule will be determined by the pending charges. For the time between arrest and arraignment, bail will be set according to the charges at arrest and booking. From arraignment forward, the charges filed by the prosecution in the complaint or information will determine the proper bail setting.

B. Excluded offenses

Subdivisions (c)(1) to (13) specify the offenses that are not subject to reduction in bail. For these offenses, the bail will be the amount currently provided in the existing bail schedule for the county. The bail setting will be in the amount provided for the underlying criminal charges, plus any count-specific conduct enhancements and any status enhancements. (Emergency rule 4, subd. (e)(1).) Nothing in the new rule prohibits the court from exercising its traditional authority in setting bail for excluded crimes lower than schedule, or for any offenses not in conflict with the emergency schedule. (Emergency rule 4, subd. (e)(2).) The emergency schedule also specifies its provisions are not intended to prevent the court from setting a “no bail” status for a defendant if authorized by the California constitution. (Emergency rule 4, subd. (d); see discussion of denial of bail, *infra*.)

For the most part, the exclusion will be determined by comparing the discrete charged crime against the list of excluded offenses. For example, all robberies, regardless of how committed, are serious and violent crimes and thus are excluded from the \$0 bail set by subdivision (c)(1) of the emergency rule. Serious and violent crimes, however, also may be charged because of the application of certain conduct enhancements such as the use of weapons or the infliction of great bodily injury. (See, *e.g.*, Pen. Code, §§ 667.5, subd. (c)(8), and 1192.7, subd. (c)(8), (23), (31).)

Unless otherwise included as a serious or violent felony, the exclusions do not appear to cover “conspiracies,” “attempts,” or “accessories.”

C. Bail enhancement

There appears to be nothing in the emergency rule that would prohibit the court from exercising its traditional discretion in a particular case to increase bail for an included offense under the procedures authorized by Penal Code sections 1269c and 1270.1, subdivision (e). Although the presumptive bail is \$0 under the emergency schedule, nothing in the rule appears to conflict with the traditional authority of the court to adjust the amount of bail to meet particular circumstances of the offense or a defendant’s criminal history. Such an increase, for example, could be ordered by the on-call magistrate under the provisions of Penal Code section 810, subdivision (a): “The presiding judge of the superior court in a county shall, as often as is necessary, designate on a schedule not less than one judge of the court to be reasonably available on call as a magistrate for the setting of orders for discharge from actual custody upon bail, the issuance of search warrants, and for such other matters as may by the magistrate be deemed appropriate, at all times when a court is not in session in the county.”

The court is also free to independently review the amount of bail at arraignment. While the new schedule provides for the presumptive bail, for good cause the court may depart from that schedule.

D. Setting conditions of release

The court may impose conditions of release, even though the bail amount is set at \$0. In *In re Webb* (2019) 7 Cal.5th 270 (*Webb*), the Supreme Court confirmed the ability of a trial court to impose reasonable conditions of release, even if the defendant has been previously released on scheduled bail. “[W]e conclude that trial courts have authority to impose reasonable conditions related to public safety on persons released on bail. We need not here consider in detail the exact contours of this authority. We stress, however, that, as the concurring justice noted below, this authority is ‘fairly narrow.’ ([Citation.]) Any condition must be *reasonable*, and there must be a sufficient nexus between the condition and the protection of public safety.” (*Webb*, at p. 278, emphasis in original.)

Conditions of release could be imposed by the on-call magistrate under the authority of Penal Code section 810, subdivision (a). It also would be appropriate under *Webb* to impose the conditions at the time of arraignment.

E. Setting bail for violations of supervision

The emergency schedule specifies bail for violations of misdemeanor supervision is \$0, whether the arrest is with or without a warrant. (Emergency rule 4, subd. (f)(1).) If the violation is a new substantive charge, however, nothing prevents bail from being set in accordance with the new crime.

Bail for violations of all forms of felony post-conviction supervision is to be set in the amount allowed for the underlying charges of conviction. (Emergency rule 4, subd. (f)(2).) Accordingly, if the supervision is for an included offense, bail is \$0. If the supervision is for an excluded offense, the bail would be as provided in the county’s regular bail schedule for the underlying offense, plus any count-specific conduct enhancements or any status enhancements.

The emergency schedule appears to prohibit the court from initially setting a “no bail” status for violations of felony supervision. The presumptive bail would be as provided in the emergency order. As noted above, however, nothing in the emergency rule prohibits the court from exercising its discretion in an individual case to depart from the schedule if necessary to assure the appearance of the defendant or protect the public.

F. Denial of bail

The emergency rule expressly provides that nothing “restricts the ability of the court to deny bail as authorized by article I, section 12, or 28(f)(3) of the California Constitution.” (Emergency rule 4, subd. (d).) The constitution provides a number of circumstances where the defendant is simply ineligible for bail. The authority of the court to enter such an order has been included in the Supreme Court’s pending review of *In re Humphrey* (2018) 19 Cal.App.5th 1006.

G. Persons who are engaged in a competency determination

Persons who are pending criminal charges with significant mental health issues are in a unique and sensitive situation. If at all possible the justice partners should collaborate on finding suitable alternative placements for these individuals. While a number of these individuals will be eligible for a \$0 bail setting, the unsupervised release of these persons would be problematic on a number of levels.

As noted previously, if the court determines that a \$0 bail setting will not reasonably assure the appearance of the defendant or protect the public, the court has the discretion to depart from the bail schedule. Such a departure could occur pre-arraignment as a result of a request to the on-call magistrate pursuant to Penal Code section 1269c, or at the time of arraignment.

Finally, the court must also keep in mind that once the proceedings have been stayed to determine the defendant’s trial competence, the court lacks jurisdiction to proceed in the criminal case. As observed in *People v. Marks* (1988) 45 Cal.3d 1335, 1337: “We reiterate our recent unanimous holding in *People v. Hale* (1988) 44 Cal.3d 531, 244 Cal.Rptr. 114, 749 P.2d 769 that, once a trial court has ordered a competency hearing pursuant to section 1368, the court lacks jurisdiction to conduct further proceedings on the criminal charge or charges against the defendant until the court has determined whether he is competent. This determination is mandated by the federal constitutional requirement of due process and by unambiguous California statutes.” The precise parameters of this restriction are not well defined. (See, e.g., *People v. Cadogan* (2009) 173 Cal.App.4th 1502 [not abuse of discretion to conduct conditional examination in stayed criminal action].) Because of the conflicting message evidenced by *Marks*, *Hale* and *Cadogan*, the court may find it more appropriate not to adjust the bail for these persons.

H. Application to persons on bail, out of custody

On its face, the emergency rule is applicable only to persons “arrested and in pretrial custody,” and persons “held in pretrial custody.” (Emergency rule 4, subd. (b)(1) and (2).) It does not reference persons who are currently out of custody either on their own recognizance or on some form of posted bail. As stated in its purpose, the rule

is “intended to promulgate uniformity in the handling of certain offenses during . . . the pandemic.” (Emergency rule 4, subd. (a).) The health risk to persons in custody, and custodial and court staff, which is the genesis of the emergency rule, have little application to persons who are out of custody. Accordingly, it is doubtful the courts are under any obligation to conduct bail review hearings or make any adjustment to the bail of persons who are out of custody.

I. Sunset of the emergency rule

The emergency rule will remain in effect until 90 days after the governor declares the end of the state of emergency caused by COVID-19, or until amended or repealed by the Judicial Council. (Emergency rule 4, subd. (g).)

Attachment A: Emergency rule 4. Emergency Bail Schedule

(a) Purpose

Notwithstanding any other law, this rule establishes a statewide Emergency Bail Schedule, which is intended to promulgate uniformity in the handling of certain offenses during the state of emergency related to the COVID-19 pandemic.

(b) Mandatory application

No later than 5 p.m. on April 13, 2020, each superior court must apply the statewide Emergency Bail Schedule:

- (1) To every accused person arrested and in pretrial custody.
- (2) To every accused person held in pretrial custody.

(c) Setting of bail and exceptions

Under the statewide Emergency Bail Schedule, bail for all misdemeanor and felony offenses must be set at \$0, with the exception of only the offenses listed below:

- (1) A serious felony, as defined in Penal Code section 1192.7(c), or a violent felony, as defined in Penal Code section 667.5(c);
- (2) A felony violation of Penal Code section 69;
- (3) A violation of Penal Code section 166(c)(1);
- (4) A violation of Penal Code section 136.1 when punishment is imposed under section 136.1(c);
- (5) A violation of Penal Code section 262;
- (6) A violation of Penal Code sections 243(e)(1) or 273.5;
- (7) A violation of Penal Code 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;
- (8) A violation of Penal Code section 422 where the offense is punished as a felony;
- (9) A violation of Penal Code section 646.9;
- (10) A violation of an offense listed in Penal Code section 290(c);
- (11) A violation of Vehicle Code sections 23152 or 23153;
- (12) A felony violation of Penal Code section 463; and
- (13) A violation of Penal Code section 29800.

(d) Ability to deny bail

Nothing in the Emergency Bail Schedule restricts the ability of the court to deny bail as authorized by article I, section 12, or 28(f)(3) of the California Constitution.

(e) Application of countywide bail schedule

(1) The current countywide bail schedule of each superior court must remain in effect for all offenses listed in exceptions (1) through (13) of the Emergency Bail Schedule, including any count-specific conduct enhancements and any status enhancements.

(2) Each superior court retains the authority to reduce the amount of bail listed in the court's current countywide bail schedule for offenses in exceptions (1) through (13), or for any offenses not in conflict with the Emergency Bail Schedule.

(f) Bail for violations of post-conviction supervision

(1) Under the statewide Emergency Bail Schedule, bail for all violations of misdemeanor probation, whether the arrest is with or without a bench warrant, must be set at \$0.

(2) Bail for all violations of felony probation, parole, post-release community supervision, or mandatory supervision, must be set in accord with the statewide Emergency Bail Schedule, or for the bail amount in the court's countywide schedule of bail for charges of conviction listed in exceptions (1) through (13), including any enhancements.

(g) Sunset of rule

This rule will remain in effect until 90 days after the Governor declares that the state of emergency related to the COVID-19 pandemic is lifted, or until amended or repealed by the Judicial Council.

Emergency Rules 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11 of the California Rules of Court are adopted effective April 6, 2020, to read:

1
2 **Emergency rule 1. Unlawful detainers**

3
4 **(a) Application**

5
6 Notwithstanding any other law, including Code of Civil Procedure sections 1166,
7 1167, 1169, and 1170.5, this rule applies to all actions for unlawful detainer.

8
9 **(b) Issuance of summons**

10
11 A court may not issue a summons on a complaint for unlawful detainer unless the
12 court finds, in its discretion and on the record, that the action is necessary to protect
13 public health and safety.

14
15 **(c) Entry of default**

16
17 A court may not enter a default or a default judgment for restitution in an unlawful
18 detainer action for failure of defendant to appear unless the court finds both of the
19 following:

20
21 (1) The action is necessary to protect public health and safety; and

22
23 (2) The defendant has not appeared in the action within the time provided by
24 law, including by any applicable executive order.

25
26 **(d) Time for trial**

27
28 If a defendant has appeared in the action, the court may not set a trial date earlier
29 than 60 days after a request for trial is made unless the court finds that an earlier
30 trial date is necessary to protect public health and safety. Any trial set in an
31 unlawful detainer proceeding as of April 6, 2020 must be continued at least 60 days
32 from the initial date of trial.

33
34 **(e) Sunset of rule**

35
36 This rule will remain in effect until 90 days after the Governor declares that the
37 state of emergency related to the COVID-19 pandemic is lifted, or until amended or
38 repealed by the Judicial Council.

1 **Emergency rule 2. Judicial foreclosures—suspension of actions**

2
3 Notwithstanding any other law, this rule applies to any action for foreclosure on a
4 mortgage or deed of trust brought under chapter 1, title 10, of part 2 of the Code of Civil
5 Procedure, beginning at section 725a, including any action for a deficiency judgment, and
6 provides that, until 90 days after the Governor declares that the state of emergency
7 related to the COVID-19 pandemic is lifted, or until this rule is amended or repealed by
8 the Judicial Council:

- 9
10 (1) All such actions are stayed, and the court may take no action and issue no
11 decisions or judgments unless the court finds that action is required to further the
12 public health and safety.
13
14 (2) Any statute of limitations for filing such an action is tolled.
15
16 (3) The period for electing or exercising any rights under that chapter, including
17 exercising any right of redemption from a foreclosure sale or petitioning the court
18 in relation to such a right, is extended.
19
20

21 **Emergency rule 3. Use of technology for remote appearances**

22
23 **(a) Remote appearances**

24
25 Notwithstanding any other law, in order to protect the health and safety of the public,
26 including court users, both in custody and out of custody defendants, witnesses, court
27 personnel, judicial officers, and others, courts must conduct judicial proceedings and
28 court operations as follows:

- 29
30 (1) Courts may require that judicial proceedings and court operations be
31 conducted remotely.
32
33 (2) In criminal proceedings, courts must receive the consent of the defendant to
34 conduct the proceeding remotely and otherwise comply with emergency rule
35 5. Notwithstanding Penal Code sections 865 and 977 or any other law, the
36 court may conduct any criminal proceeding remotely. As used in this rule,
37 “consent of the defendant” means that the consent of the defendant is
38 required only for the waiver of the defendant’s appearance as provided in
39 emergency rule 5. For good cause shown, the court may require any witness
40 to personally appear in a particular proceeding.
41
42 (3) Conducting proceedings remotely includes, but is not limited to, the use of
43 video, audio, and telephonic means for remote appearances; the electronic

1 exchange and authentication of documentary evidence; e-filing and e-service;
2 the use of remote interpreting; and the use of remote reporting and electronic
3 recording to make the official record of an action or proceeding.
4

5 **(b) Sunset of rule**
6

7 This rule will remain in effect until 90 days after the Governor declares that the
8 state of emergency related to the COVID-19 pandemic is lifted, or until amended or
9 repealed by the Judicial Council.
10

11
12 **Emergency rule 4. Emergency Bail Schedule**
13

14 **(a) Purpose**
15

16 Notwithstanding any other law, this rule establishes a statewide Emergency Bail
17 Schedule, which is intended to promulgate uniformity in the handling of certain
18 offenses during the state of emergency related to the COVID-19 pandemic.
19

20 **(b) Mandatory application**
21

22 No later than 5 p.m. on April 13, 2020, each superior court must apply the
23 statewide Emergency Bail Schedule:
24

25 (1) To every accused person arrested and in pretrial custody.
26

27 (2) To every accused person held in pretrial custody.
28

29 **(c) Setting of bail and exceptions**
30

31 Under the statewide Emergency Bail Schedule, bail for all misdemeanor and felony
32 offenses must be set at \$0, with the exception of only the offenses listed below:
33

34 (1) A serious felony, as defined in Penal Code section 1192.7(c), or a violent
35 felony, as defined in Penal Code section 667.5(c);
36

37 (2) A felony violation of Penal Code section 69;
38

39 (3) A violation of Penal Code section 166(c)(1);
40

41 (4) A violation of Penal Code section 136.1 when punishment is imposed under
42 section 136.1(c);
43

- 1 (5) A violation of Penal Code section 262;
2
3 (6) A violation of Penal Code sections 243(e)(1) or 273.5;
4
5 (7) A violation of Penal Code section 273.6 if the detained person made threats
6 to kill or harm, has engaged in violence against, or has gone to the residence
7 or workplace of, the protected party;
8
9 (8) A violation of Penal Code section 422 where the offense is punished as a
10 felony;
11
12 (9) A violation of Penal Code section 646.9;
13
14 (10) A violation of an offense listed in Penal Code section 290(c);
15
16 (11) A violation of Vehicle Code sections 23152 or 23153;
17
18 (12) A felony violation of Penal Code section 463; and
19
20 (13) A violation of Penal Code section 29800.

21
22 **(d) Ability to deny bail**

23
24 Nothing in the Emergency Bail Schedule restricts the ability of the court to deny
25 bail as authorized by article I, section 12, or 28(f)(3) of the California Constitution.
26

27 **(e) Application of countywide bail schedule**

- 28
29 (1) The current countywide bail schedule of each superior court must remain in
30 effect for all offenses listed in exceptions (1) through (13) of the Emergency
31 Bail Schedule, including any count-specific conduct enhancements and any
32 status enhancements.
33
34 (2) Each superior court retains the authority to reduce the amount of bail listed in
35 the court's current countywide bail schedule for offenses in exceptions (1)
36 through (13), or for any offenses not in conflict with the Emergency Bail
37 Schedule.
38
39
40
41
42

1 **(f) Bail for violations of post-conviction supervision**

2
3 (1) Under the statewide Emergency Bail Schedule, bail for all violations of
4 misdemeanor probation, whether the arrest is with or without a bench
5 warrant, must be set at \$0.

6
7 (2) Bail for all violations of felony probation, parole, post-release community
8 supervision, or mandatory supervision, must be set in accord with the
9 statewide Emergency Bail Schedule, or for the bail amount in the court's
10 countywide schedule of bail for charges of conviction listed in exceptions (1)
11 through (13), including any enhancements.

12
13 **(g) Sunset of rule**

14
15 This rule will remain in effect until 90 days after the Governor declares that the
16 state of emergency related to the COVID-19 pandemic is lifted, or until amended or
17 repealed by the Judicial Council.

18
19
20 **Emergency rule 5. Personal appearance waivers of defendants during health**
21 **emergency**

22
23 **(a) Application**

24
25 Notwithstanding any other law, including Penal Code sections 865 and 977, this
26 rule applies to all criminal proceedings except cases alleging murder with special
27 circumstances and cases in which the defendant is currently incarcerated in state
28 prison, as governed by Penal Code section 977.2.

29
30 **(b) Types of personal appearance waivers**

31
32 (1) With the consent of the defendant, the court must allow a defendant to waive
33 his or her personal appearance and to appear remotely, either through video
34 or telephonic appearance, when the technology is available.

35
36 (2) With the consent of the defendant, the court must allow a defendant to waive
37 his or her appearance and permit counsel to appear on his or her behalf. The
38 court must accept a defendant's waiver of appearance or personal appearance
39 when:

40
41 (A) Counsel for the defendant makes an on the record oral representation
42 that counsel has fully discussed the waiver and its implications with the

1 defendant and the defendant has authorized counsel to proceed as
2 counsel represents to the court;

3
4 (B) Electronic communication from the defendant as confirmed by
5 defendant's counsel; or

6
7 (C) Any other means that ensures the validity of the defendant's waiver.

8
9 **(c) Consent by the defendant**

10
11 (1) For purposes of arraignment and entry of a not guilty plea, consent means a
12 knowing, intelligent, and voluntary waiver of the right to appear personally in
13 court. Counsel for the defendant must state on the record at each applicable
14 hearing that counsel is proceeding with the defendant's consent.

15
16 (2) For purposes of waiving time for a preliminary hearing, consent also means a
17 knowing, intelligent, and voluntary waiver of the right to hold a preliminary
18 hearing within required time limits specified either in Penal Code section
19 859b or under emergency orders issued by the Chief Justice and Chair of the
20 Judicial Council.

21
22 (3) The court must accept defense counsel's representation that the defendant
23 understands and agrees with waiving any right to appear unless the court has
24 specific concerns in a particular matter about the validity of the waiver.

25
26 **(d) Appearance through counsel**

27
28 (1) When counsel appears on behalf of a defendant, courts must allow counsel to
29 do any of the following:

30
31 (A) Waive reading and advisement of rights for arraignment.

32
33 (B) Enter a plea of not guilty.

34
35 (C) Waive time for the preliminary hearing.

36
37 (2) For appearances by counsel, including where the defendant is either
38 appearing remotely or has waived his or her appearance and or counsel is
39 appearing by remote access, counsel must confirm to the court at each
40 hearing that the appearance by counsel is made with the consent of the
41 defendant.

1 **(e) Conduct of remote hearings**

- 2
- 3 (1) With the defendant’s consent, a defendant may appear remotely for any
- 4 pretrial criminal proceeding.
- 5
- 6 (2) Where a defendant appears remotely, counsel may not be required to be
- 7 personally present with the defendant for any portion of the criminal
- 8 proceeding provided that the audio and/or video conferencing system or other
- 9 technology allows for private communication between the defendant and his
- 10 or her counsel. Any private communication is confidential and privileged
- 11 under Evidence Code section 952.

12

13 **(f) Sunset of rule**

14

15 This rule will remain in effect until 90 days after the Governor declares that the

16 state of emergency related to the COVID-19 pandemic is lifted, or until amended or

17 repealed by the Judicial Council.

18

19

20 **Emergency rule 6. Emergency orders: juvenile dependency proceedings**

21

22 **(a) Application**

23

24 This rule applies to all juvenile dependency proceedings filed or pending until the

25 state of emergency related to the COVID-19 pandemic is lifted.

26

27 **(b) Essential hearings and orders**

28

29 The following matters should be prioritized in accordance with existing statutory

30 time requirements.

- 31
- 32 (1) Protective custody warrants filed under Welfare and Institutions Code section
- 33 340.
- 34
- 35 (2) Detention hearings under Welfare and Institutions Code section 319. The
- 36 court is required to determine if it is contrary to the child’s welfare to remain
- 37 with the parent, whether reasonable efforts were made to prevent removal,
- 38 and whether to vest the placing agency with temporary placement and care.
- 39
- 40 (3) Psychotropic medication applications.
- 41
- 42 (4) Emergency medical requests.
- 43

- 1 (5) A petition for reentry of a nonminor dependent.
2
3 (6) Welfare and Institutions Code section 388 petitions that require an immediate
4 response based on the health and safety of the child, which should be
5 reviewed for a prima facie showing of change of circumstances sufficient to
6 grant the petition or to set a hearing. The court may extend the final ruling on
7 the petition beyond 30 days.
8

9 **(c) Foster care hearings and continuances during the state of emergency**

- 10
11 (1) A court may hold any proceeding under this rule via remote technology
12 consistent with rule 5.531 and emergency rule 3.
13
14 (2) At the beginning of any hearing at which one or more participants appears
15 remotely, the court must admonish all the participants that the proceeding is
16 confidential and of the possible sanctions for violating confidentiality.
17
18 (3) The child welfare agency is responsible for notice of remote hearings unless
19 other arrangements have been made with counsel for parents and children.
20 Notice is required for all parties and may include notice by telephone or other
21 electronic means. The notice must also include instructions on how to
22 participate in the court hearing remotely.
23
24 (4) Court reports
25
26 (A) Attorneys for parents and children must accept service of the court
27 report electronically.
28
29 (B) The child welfare agency must ensure that the parent and the child
30 receive a copy of the court report on time.
31
32 (C) If a parent or child cannot receive the report electronically, the child
33 welfare agency must deliver a hard copy of the report to the parent and
34 the child on time.
35
36 (5) Nothing in this subdivision prohibits the court from making statutorily
37 required findings and orders, by minute order only and without a court
38 reporter, by accepting written stipulations from counsel when appearances
39 are waived if the stipulations are confirmed on the applicable Judicial
40 Council forms or equivalent local court forms.
41
42 (6) If a court hearing cannot occur either in the courthouse or remotely, the
43 hearing may be continued up to 60 days, except as otherwise specified.

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(A) A dispositional hearing under Welfare and Institutions Code section 360 should not be continued more than 6 months after the detention hearing without review of the child’s circumstances. In determining exceptional circumstances that justify holding the dispositional hearing more than 6 months after the child was taken into protective custody, the impact of the state of emergency related to the COVID-19 pandemic must be considered.

- i. If the dispositional hearing is continued more than 6 months after the start date of protective custody, a review of the child must be held at the 6-month date. At the review, the court must determine the continued necessity for and appropriateness of the placement; the extent of compliance with the case plan or available services that have been offered; the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement; and the projected likely date by which the child may return home or placed permanently.
- ii. The court may continue the matter for a full hearing on all dispositional findings and orders.

(B) A judicial determination of reasonable efforts must be made within 12 months of the date a child enters foster care to maintain a child’s federal title IV-E availability. If a permanency hearing is continued beyond the 12-month date, the court must review the case to determine if the agency has made reasonable efforts to return the child home or arrange for the child to be placed permanently. This finding can be made without prejudice and may be reconsidered at a full hearing.

(7) During the state of emergency related to the COVID-19 pandemic, previously authorized visitation must continue, but the child welfare agency is to determine the manner of visitation to ensure that the needs of the family are met. If the child welfare agency changes the manner of visitation for a child and a parent or legal guardian in reunification, or for the child and a sibling(s), or a hearing is pending under Welfare and Institutions Code section 366.26, the child welfare agency must notify the attorneys for the children and parents within 5 court days of the change. All changes in manner of visitation during this time period must be made on a case by case basis, balance the public health directives and best interest of the child, and take into consideration whether in-person visitation may continue to be held safely. Family time is important for child and parent well-being, as well as for efforts toward reunification. Family time is especially important during

1 times of crisis. Visitation may only be suspended if a detriment finding is
2 made in a particular case based on the facts unique to that case. A detriment
3 finding must not be based solely on the existence of the impact of the state of
4 emergency related to the COVID-19 pandemic or related public health
5 directives.

6
7 (A) The attorney for the child or parent may ask the juvenile court to
8 review the change in manner of visitation. The child or parent has the
9 burden of showing that the change is not in the best interest of the child
10 or is not based on current public health directives.

11
12 (B) A request for the court to review the change in visitation during this
13 time period must be made within 14 court days of the change. In
14 reviewing the change in visitation, the court should take into
15 consideration the factors in (c)(7).

16
17 **(d) Sunset of rule**

18
19 This rule will remain in effect until 90 days after the Governor declares that the
20 state of emergency related to the COVID-19 pandemic is lifted, or until amended or
21 repealed by the Judicial Council.

22
23 **Advisory Committee Comment**

24
25 When courts are unable to hold regular proceedings because of an emergency that has resulted in
26 an order as authorized under Government Code section 68115, federal timelines do not stop.
27 Circumstances may arise where reunification services to the parent, including visitation, may not
28 occur or be provided. The court must consider the circumstances of the emergency when deciding
29 whether to extend or terminate reunification services and whether services were reasonable given
30 the state of the emergency. (Citations: 42 U.S.C. § 672(a)(1)–(2), (5); 45 CFR § 1355.20; 45 CFR
31 § 1356.21 (b) – (d); 45 C.F.R. § 1356.71(d)(1)(iii); Child Welfare Policy Manual, 8.3A.9 Title
32 IV-E, Foster Care Maintenance Payments Program, Reasonable efforts, Question 2
33 (www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=92)); Letter dated March 27, 2020, from Jerry Milner, Associate Commissioner, Children’s
34 Bureau, Administration for Children and Families, U.S. Department of Health and Human
35 Services.)
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1 **Emergency rule 7. Emergency orders: juvenile delinquency proceedings**

2
3 **(a) Application**

4
5 This rule applies to all proceedings in which a petition has been filed under Welfare
6 and Institutions Code section 602 in which a hearing would be statutorily required
7 during the state of emergency related to the COVID-19 pandemic.

8
9 **(b) Juvenile delinquency hearings and orders during the state of emergency**

10
11 (1) A hearing on a petition for a child who is in custody under Welfare and
12 Institutions Code section 632 or 636 must be held within the statutory
13 timeframes as modified by an order of the court authorized by Government
14 Code section 68115. The court must determine if it is contrary to the welfare
15 of the child to remain in the home, whether reasonable services to prevent
16 removal occurred, and whether to place temporary placement with the
17 probation agency if the court will be keeping the child detained and out of the
18 home.

19
20 (2) If a child is detained in custody and an in-person appearance is not feasible
21 due to the state of emergency, courts must make reasonable efforts to hold
22 any statutorily required hearing for that case via remote appearance within
23 the required statutory time frame and as modified by an order of the court
24 authorized under Government Code section 68115 for that proceeding. If a
25 remote proceeding is not a feasible option for such a case during the state of
26 emergency, the court may continue the case as provided in (d) for the
27 minimum period of time necessary to hold the proceedings.

28
29 (3) Without regard to the custodial status of the child, the following hearings
30 should be prioritized during the state of emergency related to the COVID-19
31 pandemic:

32
33 (A) Psychotropic medication applications.

34
35 (B) All emergency medical requests.

36
37 (C) A petition for reentry of a nonminor dependent.

38
39 (D) A hearing on any request for a warrant for a child.

40
41 (E) A probable cause determination for a child who has been detained but
42 has not had a detention hearing within the statutory time limits.

43

1 (4) Notwithstanding any other law, and except as described in (5), during the
2 state of emergency related to the COVID-19 pandemic, the court may
3 continue for good cause any hearing for a child not detained in custody who
4 is subject to its juvenile delinquency jurisdiction until a date after the state of
5 emergency has been lifted considering the priority for continued hearings in
6 (d).

7
8 (5) For children placed in foster care under probation supervision, a judicial
9 determination of reasonable efforts must be made within 12 months of the
10 date the child enters foster care to maintain a child's federal title IV-E
11 availability. If a permanency hearing is continued beyond the 12-month date,
12 the court must nevertheless hold a review to determine if the agency has
13 made reasonable efforts to return the child home or place the child
14 permanently. This finding can be made without prejudice and may be
15 reconsidered at a full hearing.

16
17 **(c) Proceedings with remote appearances during the state of emergency.**

18
19 (1) A court may hold any proceeding under this rule via remote technology
20 consistent with rule 5.531 and emergency rule 3.

21
22 (2) At the beginning of any hearing conducted with one or more participants
23 appearing remotely, the court must admonish all the participants that the
24 proceeding is confidential and of the possible sanctions for violating
25 confidentiality.

26
27 (3) The court is responsible for giving notice of remote hearings, except for
28 notice to a victim, which is the responsibility of the prosecuting attorney or
29 the probation department. Notice is required for all parties and may include
30 notice by telephone or other electronic means. The notice must also include
31 instructions on how to participate in the hearing remotely.

32
33 (4) During the state of emergency, the court has broad discretion to take evidence
34 in the manner most compatible with the remote hearing process, including
35 but not limited to taking testimony by written declaration. If counsel for a
36 child or the prosecuting attorney objects to the court's evidentiary
37 procedures, that is a basis for issuing a continuance under (d).

38
39 **(d) Continuances of hearings during the state of emergency.**

40
41 Notwithstanding any other law, the court may for good cause continue any hearing
42 other than a detention hearing for a child who is detained in custody. In making this
43 determination, the court must consider the custody status of the child, whether there

1 are evidentiary issues that are contested, and, if so, the ability for those issues to be
2 fairly contested via a remote proceeding.

3
4 **(e) Extension of time limits under Welfare and Institutions Code section 709**

5
6 In any case in which a child has been found incompetent under Welfare and
7 Institutions Code section 709 and that child is eligible for remediation services or
8 has been found to require secure detention, any time limits imposed by section 709
9 for provision of services or for secure detention are tolled for the period of the state
10 of emergency if the court finds that remediation services could not be provided
11 because of the state of emergency.

12
13 **(f) Sunset of rule**

14
15 This rule will remain in effect until 90 days after the Governor declares that the
16 state of emergency related to the COVID-19 pandemic is lifted, or until amended or
17 repealed by the Judicial Council.

18
19 **Advisory Committee Comment**

20
21 This emergency rule is being adopted in part to ensure that detention hearings for
22 juveniles in delinquency court must be held in a timely manner to ensure that no child is
23 detained who does not need to be detained to protect the child or the community. The
24 statutory scheme for juveniles who come under the jurisdiction of the delinquency court
25 is focused on the rehabilitation of the child and thus makes detention of a child the
26 exceptional practice, rather than the rule. Juvenile courts are able to use their broad
27 discretion under current law to release detained juveniles to protect the health of those
28 juveniles and the health and safety of the others in detention during the current state of
29 emergency related to the COVID-19 pandemic.

30
31
32 **Emergency rule 8. Emergency orders: temporary restraining or protective orders**

33
34 **(a) Application**

35
36 Notwithstanding any other law, this rule applies to any emergency protective order,
37 temporary restraining order, or criminal protective order that was requested, issued,
38 or set to expire during the state of emergency related to the COVID-19 pandemic.
39 This includes requests and orders issued under Family Code sections 6250 or 6300,
40 Code of Civil Procedure sections 527.6 , 527.8, or 527.85, Penal Code sections
41 136.2, 18125 or 18150, or Welfare and Institutions Code sections 213.5, 304,
42 362.4, or 15657.03, and including any of the foregoing orders issued in connection
43 with an order for modification of a custody or visitation order issued pursuant to a

1 dissolution, legal separation, nullity, or parentage proceeding under Family Code
2 section 6221.

3
4 **(b) Duration of orders**

5
6 (1) Any emergency protective order made under Family Code section 6250 that
7 is issued or set to expire during the state of emergency, must remain in effect
8 for up to 30 days from the date of issuance.

9
10 (2) Any temporary restraining order or gun violence emergency protective order,
11 issued or set to expire during the state of emergency related to the COVID-19
12 pandemic, must be continued for a period of time that the court determines is
13 sufficient to allow for a hearing on the long-term order to occur, for up to 90
14 days.

15
16 (3) Any criminal protective order, subject to this rule, set to expire during the
17 state of emergency, must be automatically extended for a period of 90 days,
18 or until the matter can be heard, whichever occurs first.

19
20 (4) Any restraining order or protective order after hearing that is set to expire
21 during the state of emergency related to the COVID-19 pandemic must be
22 automatically extended for up to 90 days from the date of expiration to enable
23 a protected party to seek a renewal of the restraining order.

24
25 **(c) Ex parte requests**

26
27 (1) Courts must provide a means for the filing of ex parte requests for temporary
28 restraining orders. Courts may do so by providing a physical location, drop
29 box, or, if feasible, through electronic means.

30
31 (2) Any ex parte request may be filed using an electronic signature by a party or
32 a party's attorney.

33
34 **(d) Service of Orders**

35
36 If a respondent appears at a hearing by video, audio, or telephonically, and the
37 court grants an order, in whole or in part, no further service is required upon the
38 respondent for enforcement of the order, provided that the court follows the
39 requirements of Family Code section 6384.

1 **(e) Entry of orders into California Law Enforcement Telecommunications System**

2
3
4 Any orders issued by a court modifying the duration or expiration date of orders
5 subject to this rule, must be transmitted to the Department of Justice through the
6 California Law Enforcement Telecommunications System (CLETS), as provided in
7 Family Code section 6380, without regard to whether they are issued on Judicial
8 Council forms, or in another format during the state of emergency.
9

10
11 **Emergency rule 9. Toll the statutes of limitations for civil causes of action**

12
13 Notwithstanding any other law, the statutes of limitation for civil causes of action are
14 tolled from April 6, 2020, until 90 days after the Governor declares that the state of
15 emergency related to the COVID-19 pandemic is lifted.
16

17
18 **Emergency rule 10. Extensions of time in which to bring a civil action to trial**

19
20 **(a) Extension of five years in which to bring a civil action to trial**

21
22 Notwithstanding any other law, including Code of Civil Procedure section 583.310,
23 for all civil actions filed on or before April 6, 2020, the time in which to bring the
24 action to trial is extended by six months for a total time of five years and six
25 months.
26

27 **(b) Extension of three years in which to bring a new trial**

28
29 Notwithstanding any other law, including Code of Civil Procedure section 583.320,
30 for all civil actions filed on or before April 6, 2020, if a new trial is granted in the
31 action, the three years provided in section 583.320 in which the action must again
32 be brought to trial is extended by six months for a total time of three years and six
33 months. Nothing in this subdivision requires that an action must again be brought
34 to trial before expiration of the time prescribed in (a).
35

36
37 **Emergency rule 11. Depositions through remote electronic means**

38
39 **(a) Deponents appearing remotely**

40
41 Notwithstanding any other law, including Code of Civil Procedure section
42 2025.310(a) and (b), and rule 3.1010(c) and (d), a party or nonparty deponent, at

1 their election or the election of the deposing party, is not required to be present
2 with the deposition officer at the time of the deposition.

3

4 **(b) Sunset of rule**

5

6 This rule will remain in effect until 90 days after the Governor declares that the
7 state of emergency related to the COVID-19 pandemic is lifted, or until amended or
8 repealed by the Judicial Council.