



March 12, 2020

Presiding Judge Kirk Nakamura
Assistant Presiding Judge Erick Larsh
District Attorney Todd Spitzer
Public Defender Sharon L. Petrosino
Alternate Public Defender Frank Davis

Sent via Email

RE: *COVID-19, Court Procedures and Bail Decisions*

Dear Presiding Judge Nakamura, Assistant Presiding Judge Larsh, District Attorney Spitzer, Public Defender Petrosino, Alternate Public Defender Davis:

We urge you to consider the prevention and management of COVID-19 in Orange County by potentially modifying court procedures and when making bail decisions. Other jurisdictions have suspended all civil and criminal matters that require in-court appearances, or are screening individuals before court appearances to determine their body temperature.¹ People in jails are highly vulnerable to outbreaks of contagious illnesses. They are housed in close quarters and are often in poor health. Those individuals who are incarcerated and at an elevated risk of exposure to the virus will return to the community once released from jail. All of these factors will facilitate the rapid transmission of the virus. By contrast, preventing individuals from entering the jail system is the only meaningful way to help protect that individual, those who are held inside the jails, and the public outside jails.

Section 1275 of the California Penal Code states the considerations in setting bail, and makes clear that “[i]n setting, reducing, or denying bail, a judge or magistrate shall take into consideration the protection of the public” and that “public safety shall be the *primary consideration*” (emphasis added). In this case, public safety requires that as few individuals as possible circulate through the jail system.

The California Constitution allows courts to release individuals on their own recognizance “in the court’s discretion.” Article 1, Section 12. With confirmed cases that indicate community spread, the time is now to take action to protect vulnerable populations and the community at large. According to the Centers for Disease Controls and Prevention (CDC) the people at higher risk of getting very sick from this illness include: (1) adults over the age of 60 and (2) people who have serious chronic medical conditions like heart disease, diabetes and lung disease. We

¹ <https://www.abajournal.com/news/article/one-federal-court-suspends-court-appearances-others-restrict-visitors-amid-coronavirus-concerns>

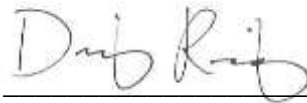
therefore encourage presumptive release on recognizance for vulnerable populations, such as people over the age of 60, pregnant people, and people with chronic illnesses, compromised immune systems, or disabilities.

There is more capacity to prevent and treat illness outside jail walls. The vast majority of people facing pretrial detention should be allowed to remain in the community. If held, they will be at substantially higher risk of exposure and serious health consequences, including death. The spread of COVID-19 in Orange County jails will create a concentrated risk of infection to local communities. We therefore urge you all to consider these factors in modifying court procedures and in your pretrial decisions.

Sincerely,



Jacob Reisberg
Jails Conditions & Policy Advocate



Daisy Ramirez
Jails Policy & Conditions Coordinator, OC