

SENATE JUDICIARY COMMITTEE
Senator Hannah-Beth Jackson, Chair
2019-2020 Regular Session

AB 3366 (Committee on Judiciary)

Version: June 8, 2020

Hearing Date: July 30, 2020

Fiscal: Yes

Urgency: Yes

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SUBJECT

Judicial emergencies

DIGEST

This bill empowers the Chairperson of the Judicial Council to authorize certain actions by the courts in response to specified emergency conditions affecting them *sua sponte*, rather than in response to requests by individual courts.

EXECUTIVE SUMMARY

Existing law, Section 68115 of the Government Code (“Section 68115”), allows a presiding judge to request, and the Chairperson of the Judicial Council, the Chief Justice of the Supreme Court, to authorize, various actions in response to specified emergency conditions. In the wake of a spate of massive wildfires, this Committee sponsored a bill, SB 1208 (Committee on Judiciary, Ch. 201, Stats. 2018), that modernized Section 68115. SB 1208 expanded the circumstances under which the authorization applies and provided additional flexibility to the Chairperson of the Judicial Council, the Chief Justice of the California Supreme Court, whom is empowered to grant authority pursuant to Section 68115 to the courts upon request.

Spurred by the recent COVID-19 pandemic, which resulted in a state of emergency affecting all 58 counties, this bill allows the Chief Justice to authorize the courts to carry out some or all of those emergency responses without a request from the presiding judge of the relevant court if the underlying emergency affects the courts in at least two counties.

The bill is sponsored by the author. It is supported by California Defense Counsel and the Consumer Attorneys of California. This bill contains an urgency clause.

PROPOSED CHANGES TO THE LAW

Existing law:

1. Permits a presiding judge to request and the Chairperson of the Judicial Council to authorize the following actions when war, an act of terrorism, public unrest or calamity, epidemic, natural disaster, or other substantial risk to the health and welfare of court personnel or the public, or the danger thereof, the destruction of or danger to the building appointed for holding the court, a large influx of criminal cases resulting from a large number of arrests within a short period of time, or a condition that leads to a state of emergency being proclaimed by the President of the United States or by the Governor, threatens the orderly operation of a superior court location or locations within a county or renders presence in, or access to, an affected court facility or facilities unsafe:
 - a. hold sessions anywhere within the county;
 - b. transfer civil cases pending trial in the court to a superior court in another county, as specified;
 - c. declare that a date or dates on which an emergency condition substantially interfered with the public's ability to file papers in a court facility or facilities be deemed a holiday for purposes of computing the time for filing papers with the court under Sections 12 and 12a of the Code of Civil Procedure, as specified;
 - d. declare that a date on which an emergency condition prevented the court from either (A) conducting proceedings governed by Section 825 of the Penal Code, or Section 315, 334, 631, 632, 637, or 657 of the Welfare and Institutions Code, or (B) accepting the filing of petitions for purposes of Section 313 or 631 of the Welfare and Institutions Code, be deemed a holiday for purposes of computing time under those statutes, as specified;
 - e. extend the time periods provided in Sections 583.310 and 583.320 of the Code of Civil Procedure to bring an action to trial;
 - f. extend the duration of any temporary restraining order that would otherwise expire because an emergency condition prevented the court from conducting proceedings to determine whether a permanent order should be entered;
 - g. within the affected county during a state of emergency resulting from a natural or human-made disaster proclaimed by the President of the United States or by the Governor pursuant to Section 8625 of the Government Code, extend the time period provided in Section 825 of the Penal Code within which a defendant charged with a felony offense shall be taken before a magistrate from 48 hours to not more than seven days, with the number of days to be designated by the Chairperson of the Judicial Council;

- h. extend the time period provided in Section 859b of the Penal Code for the holding of a preliminary examination from 10 court days to not more than 15 court days;
 - i. extend the time period provided in Section 1382 of the Penal Code within which the trial must be held by not more than 30 days, but the trial of a defendant in custody whose time is so extended shall be given precedence over all other cases;
 - j. within the affected area of a county during a state of emergency resulting from a natural or human-made disaster proclaimed by the President of the United States or by the Governor pursuant to Section 8625 of the Government Code, extend the time periods provided in Sections 313, 315, 632, and 637 of the Welfare and Institutions Code, with the number of days to be designated by the Chairperson of the Judicial Council. With regard to the time periods provided in Sections 632 and 637 of the Welfare and Institutions Code, this paragraph applies only if the minor has been charged with a felony; or
 - k. within the affected county during a state of emergency resulting from a natural or human-made disaster proclaimed by the President of the United States or by the Governor pursuant to Section 8625 of the Government Code, extend the time period provided in Sections 334 and 657 of the Welfare and Institutions Code within which a hearing on a juvenile court petition shall be held by not more than 15 days, with the number of days to be designated by the Chairperson of the Judicial Council. This authorization shall be effective for 30 days unless it is extended by a new request and a new order. With regard to the time periods provided in Section 657 of the Welfare and Institutions Code, this paragraph applies only if the minor has been charged with a felony. (Gov. Code § 68115(a).)
2. Places limitations on the length of the extensions of time above with many limited to the fewest days necessary under the circumstances of the emergency, as determined by the Chairperson of the Judicial Council. The law further provides that the above limitations on extensions of time provided for in subdivision (a) set forth the maximum respective extensions allowable from the time when the Chairperson of the Judicial Council makes a determination that circumstances warranting relief under this section exist. The limitations on extensions of time do not preclude the Chairperson of the Judicial Council, at the request of a presiding judge, from granting further extensions, up to the maximum permitted under the relevant paragraph, upon making a renewed determination that circumstances warranting relief under this section continue to exist. (Gov. Code § 68115(b).)

3. Authorizes the Governor to proclaim a state of emergency in an area affected or likely to be affected thereby when the Governor finds that circumstances described in subdivision (b) of Section 8558 exist; and either
 - a. the Governor is requested to do so (1) in the case of a city by the mayor or chief executive, (2) in the case of a county by the chairman of the board of supervisors or the county administrative officer; or
 - b. the Governor finds that local authority is inadequate to cope with the emergency. (Gov. Code § 8625.)
4. Defines “state of emergency” as the duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the state caused by such conditions as air pollution, fire, flood, storm, epidemic, riot, drought, sudden and severe energy shortage, plant or animal infestation or disease, the Governor’s warning of an earthquake or volcanic prediction, or an earthquake, or other conditions, other than conditions resulting from a labor controversy or conditions causing a “state of war emergency,” which, by reason of their magnitude, are or are likely to be beyond the control of the services, personnel, equipment, and facilities of any single county, city and county, or city and require the combined forces of a mutual aid region or regions to combat, or with respect to regulated energy utilities, a sudden and severe energy shortage requires extraordinary measures beyond the authority vested in the California Public Utilities Commission. (Gov. Code § 8558.)
5. Requires each trial court to determine the number and location of sessions of the court necessary for the prompt disposition of the business before the court. In making this determination, the court must consider, among other factors, the impact of this provision on court employees, the availability and adequacy of facilities for holding the court session at the specific location, the efficiency and cost of holding the session at the specific location, any applicable security issues, and the convenience to the parties and the public served by the court. The preceding provision makes clear that it does not preclude a session from being held in a building other than a courthouse. (Gov. Code § 69740(a).)
6. Establishes the Judicial Council and requires it to survey judicial business and make recommendations to the courts, make recommendations annually to the Governor and Legislature, adopt rules for court administration, practice and procedure, and perform other functions prescribed by statute in order to improve the administration of justice. The rules adopted shall not be inconsistent with statute. (Cal. Const. art. VI, § 6.)

This bill:

- 1) Authorizes the Chairperson of the Judicial Council to issue an order *sua sponte* authorizing multiple courts to implement some or all of the relief provided for in Section 68115 when the Chairperson determines that a circumstance warranting relief affects court locations in more than one county.
- 2) Declares that it is an urgency statute necessary for the immediate preservation of the public peace, health, or safety. It declares that in order to timely address the ongoing COVID-19 pandemic the authority granted by the bill to the Chief Justice must be granted immediately.

COMMENTS

1. Stated need for the bill

According to the author:

This bill will amend Government Code Section 68115 to supplement the existing powers of Chief Justice in the event of a statewide or multiple-county emergency. Specifically, when emergency conditions threaten the orderly operation of the courts in more than one county, or more than one district of courts of appeal, or if the emergency otherwise renders courts unsafe to court personnel or the public, this bill would authorize the Chief Justice to issue appropriate multi-county or statewide emergency orders, with or without an Executive Order or requests from presiding superior court judges.

2. The COVID-19 pandemic and the courts

On March 4, 2020, Governor Gavin Newsom declared a state of emergency in California in response to the growing COVID-19 pandemic. In response to the impact the emergency had on the orderly operation of their courts, the presiding judges in counties across the state began to request authority to implement the relief provided for in Section 68115. According to the California Courts web site, orders began to be approved from a handful of counties on March 13, 2020, extending time lines and declaring days during which court access was limited to be court holidays for the computation of time. Over the following two months, over 100 requests were made and granted for various relief in individual courts.

In addition to granting individual requests to courts, Chief Justice Tani Cantil-Sakauye also issued guidance to courts encouraging various actions. Eventually, citing her authority pursuant to article VI, section 6 of the California Constitution, and Section

68115, the Chief Justice responded to the crisis by issuing the following orders on March 23, 2020:

1. All jury trials are suspended and continued for a period of sixty (60) days from the date of this order. Courts may conduct such a trial at an earlier date, upon a finding of good cause shown or through the use of remote technology, when appropriate.
2. The time period provided in Penal Code section 1382 for the holding of a criminal trial is extended for a period of sixty (60) days from the date of this order. Courts may conduct such a trial at an earlier date, upon a finding of good cause shown or through the use of remote technology, when appropriate.
3. The time period provided in Code of Civil Procedure sections 583.310 and 583.320 for the holding of a civil trial is extended for a period of sixty (60) days from the date of this order. Courts may conduct such a trial at an earlier date, upon a finding of good cause shown or through the use of remote technology, when appropriate.
4. All superior courts are authorized under rule 10.613(i) of the California Rules of Court to adopt any proposed rules or rule amendment that is intended to address the impact of the COVID-19 pandemic to take effect immediately, without advance circulation for 45 days of public comment. A court adopting any such rule change must provide a copy to Judicial Council staff and post notice of the change prominently on the court's website, along with the effective date of the new or amended rule. Additionally, the court must immediately distribute the new or amended rule as set forth in rule 10.613(g)(2). No litigant's substantive rights shall be prejudiced for failing to comply with the requirements of a new or amended rule until at least 20 days after the rule change has been distributed.¹

On March 27, 2020, Governor Newsom signed an executive order "to enhance the authority of California's Judicial Branch to take emergency action in the face of the COVID-19 crisis."² Citing the authority vested in him by the California Constitution and

¹ California Courts Newsroom, *Judicial Council Of California Statewide Order By Hon. Tani G. Cantil-Sakauye, Chief Justice Of California And Chair Of The Judicial Council* (March 23, 2020) https://newsroom.courts.ca.gov/internal_redirect/cms.ipressroom.com.s3.amazonaws.com/262/files/2020/Statewide%20Order%20by%20the%20Chief%20Justice-Chair%20of%20the%20Judicial%20Council%203-23-2020.pdf [as of June 29, 2020].

² Office of Governor Gavin Newsom, *Governor Newsom Issues Executive Order on Judicial Council Emergency Authority* (March 27, 2020) <https://www.gov.ca.gov/2020/03/27/governor-newsom-issues-executive-order-on-judicial-council-emergency-authority/> [as of June 29, 2020].

Government Code Sections 8567, 8571, and 8627, the Governor laid out a series of orders.³ He suspended any limitation, imposed or implied, by any law, including Section 68115, on the “subject matter the Chairperson of the Judicial Council may address via emergency order or statewide rule issued pursuant to section 68115.” The stated intention was to “remove any impediment that would otherwise prevent the Chairperson from authorizing, by emergency order or statewide rule, any court to take any action she deems necessary to maintain the safe and orderly operation of that court.” The Governor also similarly suspended any such limitations on the Chief Justice’s authority to issue, amend, or suspend any court rules in response to the COVID-19 pandemic.

Following the executive order, the Chief Justice issued another order on March 30, 2020, authorizing the extension of various time periods and ordering an amendment to her prior jury trial order as follows:

A. Authorize superior courts to issue implementation orders that:

1. Extend the time period provided in section 859b of the Penal Code for the holding of a preliminary examination and the defendant’s right to release from 10 court days to not more than 30 court days;
2. Extend the time period provided in section 825 of the Penal Code within which a defendant charged with a felony offense must be taken before a magistrate from 48 hours to not more than seven days;
3. Extend the time period provided in section 1382 of the Penal Code for the holding of a criminal trial by no more than 60 days from the last date on which the statutory deadline otherwise would have expired;
4. Extend the time periods provided in sections 583.310 and 583.320 of the Code of Civil Procedure to bring an action to trial by no more than 60 days from the last date on which the statutory deadline otherwise would have expired;
5. These extensions are in addition to any relief provided pursuant to a court specific emergency order issued under a subdivision of Government Code section 68115 related to another extension or form of relief.

³ Governor Gavin Newsom, *Executive Order N-38-20* (March 27, 2020) <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.27.20-N-38-20.pdf> [as of June 29, 2020].

B. Order that the 60-day continuance of jury trials, which I authorized in my order of March 23, 2020, is to be calculated from the date for which the trial was set or extended as provided in A.3 or A.4 above, whichever is longer; and

C. To support courts in making use of available technology, when possible, to conduct judicial proceedings and court operations remotely, suspend any rule in the California Rules of Court to the extent such rule would prevent a court from using technology to conduct judicial proceedings and court operations remotely, in order to protect the health and safety of the public, court personnel, judicial officers, litigants, and witnesses. This is consistent with the Governor's order, which also provides for the suspension of related statutes that impose limitations on the subject of these emergency orders.⁴

On April 6, 2020, 11 statewide, emergency orders were issued, providing or amending the procedures and timelines for various matters, including unlawful detainers, criminal matters, including the setting of \$0 bail for specified charges, juvenile proceedings, and various other civil matters. Other statewide orders soon followed while previous orders were rescinded.

3. Streamlining the emergency authority of the Chief Justice

This bill seeks to streamline the operation of Section 68115 when the underlying emergency or extraordinary circumstance affects more than one county. Instead of a process whereby individual courts must request authority to implement the measures provided for in the statute, the Chief Justice is empowered to authorize the courts to take necessary action *sua sponte*, without waiting for each request and in one fell swoop. The Chief Justice may exercise such authority when it is determined that a circumstance warranting relief affects court locations in more than one county.

The utility of such a change is clear given the initial phases of the ongoing pandemic. Rather than wait for and grant individual requests from the over 50 counties seeking relief piecemeal, the Chief Justice could have initially granted the appropriate authorizations for each affected court to adjust time lines, extend protective orders, and declare court holidays in one order upon the determination that relief was warranted. It should be noted that the bill simply allows the Chief Justice to *authorize* the courts to take the enumerated actions as opposed to *ordering* them to, as the current process provides for. Thus, the ultimate decision maker for whether the modified processes and

⁴ California Courts Newsroom, *Judicial Council Of California Statewide Order By Hon. Tani G. Cantil-Sakauye, Chief Justice Of California And Chair Of The Judicial Council* (March 30, 2020) https://newsroom.courts.ca.gov/internal_redirect/cms.ipressroom.com.s3.amazonaws.com/262/files/2020/Statewide%20Order%20by%20the%20Chief%20Justice-Chair%20of%20the%20Judicial%20Council%203-30-2020.pdf [as of June 29, 2020].

procedures that are authorized by the Chief Justice are going to be implemented in any county will be the presiding judge of that county. It should be noted that this bill does not otherwise affect the powers of the Chief Justice derived from other sources.

4. Stakeholders

The Consumer Attorneys of California write in support:

This pandemic has highlighted the dire need for the judicial branch to have clear emergency authority to ensure our court system can function. Without a unifying entity such as the Chairperson of the Judicial Council each county court must come up with their own procedures and rules in response to the emergency. AB 3366 will allow the Chief Justice, the Chairperson of the Judicial Council, to among other actions, authorize the court to hold sessions anywhere within the county, transfer civil cases, declare specified dates as holidays due to emergency conditions, and extend statutory time periods to bring a trial.

Writing in opposition to the bill, the Bay Area Housing Advocacy Coalition claims: “AB 3366 will eliminate essentially all statutes of limitation, a necessary component to the expedient development of housing in California. The frequent and lengthy nature of California state of emergency proclamations means that eliminating statute of limitations will drastically affect the development of housing, among other issues.”

SUPPORT

California Defense Counsel
Change for Justice
Consumer Attorneys of California
Los Angeles County District Attorney’s Office

OPPOSITION

Bay Area Housing Advocacy Coalition

RELATED LEGISLATION

Pending Legislation: None known .

Prior Legislation: SB 1208 (Committee on Judiciary, Ch. 201, Stats. 2018) *See Executive Summary.*

PRIOR VOTES:

Assembly Floor (Ayes 62, Noes 2)

Assembly Appropriations Committee (Ayes 13, Noes 0)

Assembly Judiciary Committee (Ayes 8, Noes 0)
