



## Judicial Council of California

ADMINISTRATIVE OFFICE OF THE COURTS

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Telephone 415-865-4200 • Fax 415-865-4205 • TDD 415-865-4272

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# MEMORANDUM

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**Date**

April 25, 2014

**Action Requested**

Please review

**To**

Presiding Judges of the Superior Courts  
Court Executive Officers of the Superior  
Courts

**Deadline**

Not Applicable

**From**

Deborah C. Brown, Chief Counsel  
Charles E. Perkins, Senior Attorney  
AOC Legal Services Office

**Contact****Emergency Contacts for Evenings,  
Weekends, Holidays:**

24-Hour On-Call Service  
888-225-3583

**Subject**

Procedures for Requesting Judicial  
Emergency Orders (Gov. Code, § 68115)

**Primary Contact During Court  
Business Hours:**

Charles E. Perkins, Senior Attorney<sup>1</sup>  
415-865-4609 phone  
charles.perkins@jud.ca.gov

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This memorandum updates and replaces previous memoranda describing how to request a judicial emergency order from the Chief Justice in her role as Chair of the Judicial Council.<sup>2</sup> Because it is impossible to predict who within a court will be best able to work with the AOC Legal Services Office (LSO) in an emergency situation,<sup>3</sup> please feel free to distribute this memorandum widely to the court's judges and management staff as appropriate.

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<sup>1</sup> Additional attorney contacts are listed in the body of this memorandum.

<sup>2</sup> There have been no substantive changes to the law governing emergency order requests since the last iteration of this memorandum issued on August 26, 2013. This updated version provides new contact information and makes nonsubstantive changes throughout. It, and any future updates to it, will be available to presiding judges and court executive officers, and will be posted on Serranus on the AOC Legal Services Office (LSO) web page at <http://serranus.courtinfo.ca.gov/programs/ogc/jeo.htm>.

<sup>3</sup> The Chief Justice has authorized the LSO to receive and process emergency order requests submitted for her consideration.

## **Primary Contacts for Emergency Orders**

**For evenings, weekends, and holidays**, please contact the Administrative Office of the Courts' 24-Hour On-Call Service at 888-225-3583.<sup>4</sup>

**During normal court business hours**, please contact Senior Attorney Charles Perkins at 415-865-4609. If Mr. Perkins is unavailable, please contact Supervising Attorney Michael Giden at 818-558-4802. If neither Mr. Perkins nor Mr. Giden is available, please call the LSO's main office line at 415-865-7446, specify that you are calling to request an emergency order, and ask to speak with an attorney.

## **Authority for Emergency Orders from the Chair of the Judicial Council**

Government Code section 68115 authorizes the Chair of the Judicial Council (the Chief Justice) to issue judicial emergency orders, at the request of a superior court's presiding judge, when war, insurrection, pestilence, or other public calamity, or the danger thereof, or the destruction of or danger to court buildings renders it necessary, or when a large influx of criminal cases resulting from a large number of arrests within a short period of time threatens the orderly operation of the courts.<sup>5</sup> Most requests for emergency orders are submitted by courts that face a large influx of criminal cases resulting from mass arrests or from courts affected by serious earthquakes, floods, fires, or other extraordinary circumstances that render a court facility partially or fully unusable.

In an emergency order, the Chair of the Judicial Council can authorize a court, "notwithstanding any other provision of law," to do one or more of the following, depending on the circumstances of the emergency:

- Hold sessions anywhere within the county;
- Transfer civil cases pending in the court to a court in an adjacent county;
- Declare a holiday for purposes of computing time under certain statutes;
- Extend the duration of a temporary restraining order;
- Extend the time period for holding a preliminary examination; and
- Extend the time period within which a criminal trial must be held.

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<sup>4</sup> The 24-Hour On-Call Service is managed by the AOC Office of Real Estate and Facilities Management and provides courts with an always-available means of reporting facilities-related emergencies. Call Service staff can put courts in touch with an LSO attorney outside of normal business hours to relay the need for an emergency order.

<sup>5</sup> A copy of Government Code section 68115, current as of the date of this memorandum, is included in the appendix.

If the President of the United States or the Governor has declared a state of emergency,<sup>6</sup> the emergency order can also include authorization for the court to:

- Extend the time period within which a defendant charged with a felony offense must be taken before a magistrate;
- Extend the time period within which a minor must be given a detention hearing; and
- Extend the time period within which an adjudication on a juvenile court petition must be held.

### **Procedure for Requesting an Emergency Order**

Please follow the procedure outlined below to request a judicial emergency order from the Chair of the Judicial Council.

**Important Note:** The safety and well-being of court personnel and court users are paramount. If a presiding judge or an appropriate member of court management determines that the emergency circumstances create a risk of physical harm to court staff or the public at a court facility, steps should be taken to ensure that the facility is evacuated before proceeding with the process below.<sup>7</sup> The court does not need to obtain an emergency order as a prerequisite to evacuating a courthouse.

1. Call one of the attorney contacts listed in this memorandum to discuss the court's situation and whether an emergency order is appropriate.<sup>8</sup>
2. When you are ready to seek an emergency order, submit a written request if possible.<sup>9</sup> The request should come from the court's presiding judge, or from his or her delegate, with indication that the request is made on behalf of the presiding judge. A written request will assist the Chair of the Judicial Council in determining whether to issue an emergency order and, if so, the scope of that order.

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<sup>6</sup> If it is unknown, the LSO can assist in determining whether the President of the United States or Governor has declared a state of emergency and, if not, whether such a declaration is expected.

<sup>7</sup> If challenged, it is likely that such action could be justified both by statute (see, e.g., Code Civ. Proc., § 128(a) [every court has the power to preserve and enforce order in its immediate presence]) and pursuant to the court's inherent powers. (See, e.g., *Millholen v. Riley* (1930) 211 Cal. 29, 33–34 [“A court set up by the Constitution has within it the power of self-preservation, indeed, the power to remove all obstructions to its successful and convenient operation”].)

<sup>8</sup> The LSO attorney can assist the court in coordinating with the AOC Office of Real Estate and Facilities Management and with the AOC Office of Security, as necessary.

<sup>9</sup> Written requests may be faxed to the LSO at 415-865-7664.

If circumstances prevent you from submitting a written request, however, the pertinent information may be conveyed to the assisting LSO attorney by telephone.

If you do submit a written request, inclusion of the following information will expedite the process of obtaining a signed emergency order:

- a. The specific facts constituting an emergency under section 68115;
- b. The specific subdivisions of section 68115 that the court wishes to invoke;<sup>10</sup>
- c. Any unusual circumstances affecting judicial workload, including vacations, illnesses, and disqualifications; and
- d. The anticipated duration of the emergency, with supporting facts. Please note that emergency orders are issued for the shortest period of time necessary and in some circumstances may not exceed 30 days.<sup>11</sup> If the emergency conditions exist past the effective dates of the order, the court must submit a written request for an extension of the order and must state the number of additional days of emergency relief that it seeks. The LSO attorney can assist the court in preparing the request.

For your convenience, the appendix to this memorandum includes a form that can be used to request an emergency order or as a drafting guide for preparing a written request. The form may be modified or supplemented with additional materials as appropriate.

3. Ideally, the court should transmit its written request for an emergency order to the local public defender, district attorney, and any other interested justice partners, or otherwise notify those entities of the request, the facts supporting the request, and the relief sought.<sup>12</sup> The noticed entities may be told to contact the assisting LSO attorney if they have questions about or opposition to the emergency order request.
4. Once the assisting LSO attorney has worked with the court to gather all relevant information, he or she will submit a draft emergency order and a cover memorandum to the Chair of the Judicial Council. The cover memorandum will explain the nature of the emergency, discuss

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<sup>10</sup> As noted above, certain relief—specifically, that authorized by subdivisions (f), (i), and (j) of section 68115—is available only when a state of emergency has been proclaimed by the President of the United States or by the Governor (pursuant to Government Code section 8625). If you are uncertain as to which types of relief are appropriate, the assisting LSO attorney can help you make that determination.

<sup>11</sup> See Gov. Code, § 68115(c), (d), (e), (g), & (h). In other circumstances, emergency orders are effective for 30 days unless the order is extended by a new order issued following a new request. (Gov. Code, § 68115(f), (i), (j).)

<sup>12</sup> In many instances, the emergency conditions impacting the court also will affect the court's justice partners. Keeping those entities apprised of the court's plan for dealing with the emergency may facilitate the orderly operation of court processes. And if those entities are *not* affected by the emergency conditions, explaining the need for an emergency order as early as possible will enable them to plan for—and may serve to minimize later objections to—the closure of a courthouse and any resulting emergency relief. The assisting LSO attorney can help notify the affected entities if necessary.

the types of relief requested, and make recommendations to the chair on which types of relief appear justified under the law and the particular facts.

If the chair grants a request for emergency relief, the assisting LSO attorney will immediately notify the presiding judge (or his or her designated contact) and, if the court's circumstances allow, will fax or e-mail a copy of the signed emergency order to the court. If desired, the LSO attorney can assist the court in preparing a court-specific implementation order that incorporates the terms of the emergency order.<sup>13</sup> The court's judicial officers can then issue a copy of the implementation order in each specific case affected by the terms of the emergency order. Whether through an implementation order or otherwise, the court should notify all interested parties of the issuance of the emergency order and its terms. Again, should the court request, the LSO attorney can assist with these notifications.

5. While the emergency order is in effect, the court should advise the assisting LSO attorney of any material change in the conditions described in the request for the order.

Please feel free to contact Charles Perkins at 415-865-4609, if you have any questions about this procedure. Thank you.

CEP/dag  
Attachments

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<sup>13</sup> An emergency order does not itself grant any specific relief. Instead, it authorizes the court to order various forms of relief, as appropriate. The assisting LSO attorney can help the court prepare a template order, which the court may use when ordering authorized emergency relief.

## **APPENDIX**

### Government Code section 68115

When war, insurrection, pestilence, or other public calamity, or the danger thereof, or the destruction of or danger to the building appointed for holding the court, renders it necessary, or when a large influx of criminal cases resulting from a large number of arrests within a short period of time threatens the orderly operation of a superior court location or locations within a county, the presiding judge may request and the Chairperson of the Judicial Council may, notwithstanding any other provision of law, by order authorize the court to do one or more of the following:

- (a) Hold sessions anywhere within the county.
- (b) Transfer civil cases pending trial in the court to a superior court in an adjacent county. No transfer may be made pursuant to this subdivision except with the consent of all parties to the case or upon a showing by a party that extreme or undue hardship would result unless the case is transferred for trial. Any civil case so transferred shall be integrated into the existing caseload of the court to which it is transferred pursuant to rules to be provided by the Judicial Council.
- (c) Declare that a date or dates on which an emergency condition, as described in this section, 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. This subdivision shall apply to the fewest days necessary under the circumstances of the emergency, as determined by the Chairperson of the Judicial Council.
- (d) Declare that a date on which an emergency condition, as described in this section, prevented the court from conducting proceedings governed by Section 825 of the Penal Code, or Section 313, 315, 631, 632, 637, or 657 of the Welfare and Institutions Code, be deemed a holiday for purposes of computing time under those statutes. This subdivision shall apply to the fewest days necessary under the circumstances of the emergency, as determined by the Chairperson of the Judicial Council.
- (e) Extend the duration of any temporary restraining order that would otherwise expire because an emergency condition, as described in this section, prevented the court from conducting proceedings to determine whether a permanent order should be entered. The extension shall be for the fewest days necessary under the circumstances of the emergency, as determined by the Chairperson of the Judicial Council.
- (f) 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. This authorization shall be effective for 30 days unless it is extended by a new request and a new order.

- (g) 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 days.
- (h) 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.
- (i) 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 period provided in Sections 313, 315, 632, and 637 of the Welfare and Institutions Code within which a minor shall be given a detention hearing, with the number of days to be designated by the Chairperson of the Judicial Council. The extension of time shall be for the shortest period of time necessary under the circumstances of the emergency, but in no event shall the time period within which a detention hearing must be given be extended to more than seven days. This authorization shall be effective for 30 days unless it is extended by a new request and a new order. This subdivision shall apply only where the minor has been charged with a felony.
- (j) 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 an adjudication 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. This subdivision shall apply only where the minor has been charged with a felony.

TO: Hon. Tani G. Cantil-Sakauye, Chair of the Judicial Council  
c/o Administrative Office of the Courts, Legal Services Office  
415-865-7664 (fax)

FROM: *Name:* \_\_\_\_\_  
*Title:* \_\_\_\_\_  
*Court:* Superior Court of \_\_\_\_\_ County  
*Telephone:* \_\_\_\_\_  
*Fax:* \_\_\_\_\_  
*E-mail Address:* \_\_\_\_\_

DATE: \_\_\_\_\_

SUBJECT: Request for Judicial Emergency Order

I hereby request an order allowing the court to implement the following emergency procedures pursuant to the provisions of section 68115 of the Government Code:

- ☐ The court may hold sessions anywhere in the county, including in correctional and juvenile detention facilities, from \_\_\_\_\_ to \_\_\_\_\_. (Gov. Code, § 68115(a).)  
(date) (date)
- ☐ With the consent of all parties to the case or upon a showing by a party that extreme or undue hardship would result unless the case is transferred for trial, the court may transfer civil cases pending trial in the court to a court having jurisdiction of the subject matter in an adjacent county from \_\_\_\_\_ to \_\_\_\_\_. (Gov. Code, § 68115(b).)  
(date) (date)
- ☐ The court may declare \_\_\_\_\_ to be deemed a holiday for purposes of  
(date(s))  
computing the time for filing papers with the court under Code of Civil Procedure sections 12 and 12a. (Gov. Code, § 68115(c).)
- ☐ The court may declare \_\_\_\_\_ to be deemed a holiday for purposes of  
(date(s))  
computing the time under Penal Code section 825 or Welfare and Institutions Code sections 313, 315, 631, 632, 637, or 657 (*circle all those that apply*). (Gov. Code, § 68115(d).)

- ☐ The court may extend the duration of any temporary restraining order that would otherwise expire because the emergency condition prevented the court from conducting proceedings to determine whether a permanent order should be entered. (Gov. Code, § 68115(e).)

This request applies only to cases where the restraining order is set to expire between

\_\_\_\_\_ and \_\_\_\_\_.  
(date) (date)

- ☐ The court may 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

\_\_\_\_\_ days. (Gov. Code, § 68115(g).) This request applies only to

(number not exceeding 15)

cases where the examination is set to take place from \_\_\_\_\_ to \_\_\_\_\_.  
(date) (date)

- ☐ The court may extend the time period provided in section 1382 of the Penal Code within which the trial must be held by not more than \_\_\_\_\_ days.

(number not exceeding 30)

(Gov. Code, § 68115(h).) This request applies only to cases where the trial is set to take place from \_\_\_\_\_ to \_\_\_\_\_.

(date)

(date)

***PLEASE NOTE: The following five options are only available if the President of the United States or the Governor has declared a state of emergency. If you are unsure whether a state of emergency has been declared, the AOC Legal Services Office can assist you in determining this.***

- ☐ The court may 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 \_\_\_\_\_ days. (Gov. Code, § 68115(f).)

(number not exceeding 7)

The extension of time shall be for the shortest period of time necessary under the circumstances of the emergency. This request does not apply to any defendant taken into custody after \_\_\_\_\_.

(date)

- ☐ The court may extend the time period provided in sections 313 and 315 of the Welfare and Institutions Code within which a minor must be given a detention hearing to not more than \_\_\_\_\_ days. (Gov. Code, § 68115(i).) The extension of time shall be for

(number not exceeding 7)

the shortest period of time necessary under the circumstances of the emergency. This request does not apply to any minor taken into custody after \_\_\_\_\_.  
(date)

- ☐ The court may extend the time period provided in sections 632 and 637 of the Welfare and Institutions Code within which a minor who has been charged with a felony must be given a detention hearing to not more than \_\_\_\_\_ days. (Gov. Code, § 68115(i).)  
(number not exceeding 7)

The extension of time shall be for the shortest period of time necessary under the circumstances of the emergency. This request does not apply to any minor taken into custody after \_\_\_\_\_.  
(date)

- ☐ The court may extend the time period provided in section 334 of the Welfare and Institutions Code within which an adjudication on a juvenile court petition must be held by not more than \_\_\_\_\_ days. (Gov. Code, § 68115(j).) This shall not apply to any minor for whom the time period provided in section 334 begins to run after \_\_\_\_\_.  
(number not exceeding 15)  
(date)

- ☐ The court may extend the time period provided in section 657 of the Welfare and Institutions Code within which an adjudication on a juvenile court petition where the minor has been charged with a felony must be held by not more than \_\_\_\_\_ days.  
(number not exceeding 15)  
(Gov. Code, § 68115(j).) This shall not apply to any minor for whom the time period provided in section 657 begins to run after \_\_\_\_\_.  
(date)

I further request that the order apply to those proceedings in which the last day of the statutory time period would occur on or between the following date(s):

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The circumstances necessitating this emergency order are described below.

*Please insert description of emergency circumstances:*

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*Please insert a description of the service or facilities that have been adversely affected as well as the anticipated duration of any suspension of court operations or facilities closure:*

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The public defender, the district attorney, and other interested local entities have been notified of this request for emergency order. Copies of this written request have been sent to these parties, and they have been advised to immediately notify the Administrative Office of the Courts' Legal Services Office of any opposition or questions regarding the request.

*Please list the names and telephone numbers of the district attorney, the public defender, and other notified parties affected by the order:*

District Attorney: \_\_\_\_\_

Public Defender: \_\_\_\_\_

Others Parties Affected: \_\_\_\_\_

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Signature: \_\_\_\_\_

Date: \_\_\_\_\_