

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA
STANDING ORDER OF THE COURT
REGARDING “TIME-NOT-WAIVED” TRIAL PROCEDURES**

To facilitate effective management of “time-not-waived” (TNW) criminal trial cases (cases in which a party is asserting a statutory right to a speedy trial under Penal Code section 1382) in light of the past, acute, and ongoing impact of the global COVID-19 pandemic, the court hereby implements the following procedures and guidelines effective immediately.¹

Court Goals Related to TNW Cases

These procedures are in response to the overwhelming challenges caused by the global COVID-19 pandemic and reflect the court’s efforts to achieve goals that include: 1) maximizing and expediting the ability to resolve by trial or trial-calendar settlement every TNW trial case as soon as the case appears on a TNW trial calendar by requiring the parties to have completed their trial preparation, to have filed with the court their trial pleadings, and to have filed with the court materials informing the court of the parties’ settlement posture and to expedite an informed court-indicated sentence where appropriate (Cal. Rule of Court 4.112(a); Pen. Code § 1204.5(b)); 2) maximizing and expediting the court’s ability to prioritize TNW cases for assignment to trial departments as those departments become available; 3) maximizing and expediting the court’s ability to assign TNW cases to trial departments by having all TNW cases in a “standby” posture for trial; 4) maximizing use of Preliminary Hearing/Trial department resources for trial work and preliminary hearing support, as opposed to negotiating and “discussion” forums, including through use of the Assigned Judges Readiness program.

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¹ The Statewide Order by Chief Justice and Chair of the Judicial Council Tani G. Cantil-Sakauye, March 23, 2020, allows for an exception to Cal. Rule of Court 10.613(i) for “adopt[ion of] any proposed rules or rule amendment[s] ... intended to address the impact of the COVID-19 pandemic to take effect immediately, without advance circulation for 45 days of public comment.”

1 **TNW Felony Trial Cases**

2 ***New Felony TNW Trial Settings:*** Starting the week of 2/7/22, when a felony case is set for
3 trial TNW, due to local conditions and needs, the court will set the initial trial date on, or on
4 the week of, the statutory “last day for trial” (Pen. Code § 1382). Therefore, when cases are
5 set for trial TNW, the cases and the parties should be trial ready on the initial trial date in
6 recognition of the statutory “last day.” To ensure the parties fulfill their commitment to a
7 TNW trial setting, the court will also set the following dates, subject to any case-specific
8 factors, which will be reflected in the minutes:

- 9 1. The date for hearing pretrial motions, which will be 15 calendar days before the initial
10 TNW trial date, and the date to file pretrial motions will be 30 calendar days before
11 the initial TNW trial date. (Cal. Rule of Court 4.100(1)(B).) Motions will be filed
12 with, and scheduling of hearing on the motion(s) will be done by, the Law and Motion
13 department (D27) consistent with that department’s calendaring protocol and Local
14 Rule 9(H). All pretrial motions should be filed no later than 30 calendar days before
15 the initial TNW trial date, absent a request for an order shortening time providing
16 case-specific factors not previously raised or considered, signed by the Supervising
17 Judge of the Criminal Division. Absent case-specific factors dictating otherwise, all
18 pretrial motions will be heard: 1) not later than 15 calendar days before the initial
19 TNW trial date, or 2) at the direction of the Law & Motion department not later than
20 the date of the remote Readiness Conference the court day immediately preceding the
21 initial TNW trial date, or 3) at another time as directed by the court upon a showing of
22 good cause. (Cal. Rule of Court 4.112(b).)

- 23 2. The date for filing *in limine* motions, witness lists, and a required Readiness brief²
24 which will be 5 calendar days before the initial TNW trial date.

25 Readiness briefs shall include, but need not be limited to:

- 26 1. Prosecution: a statement of facts expected to be shown by the evidence; perceived
27 factors in aggravation; factors in mitigation; criminal history information, including
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² Cal. Rule of Court 4.112(a); Pen. Code § 1204.5(b).

1 prior performance on probation and/or parole; other pending cases and their status; the
2 history of prosecution settlement offers; the history of defense settlement proposals;
3 any indicated sentences previously given by the court; whether collateral
4 consequences have been considered; Three Strikes review, if pertinent; consideration
5 of substance abuse/mental health issues and treatment, if pertinent.

- 6 2. Defense: any information about the defendant or the case that the defendant consents
7 to a trial judge considering, and/or that the defendant desires a judge who is not the
8 trial judge to consider pursuant to Penal Code section 1204.5, or a statement that the
9 defendant chooses to defer providing such information without prejudice.

10 On the initial TNW trial date, the court may find good cause to extend the statutory
11 “last day” for consideration of an order of dismissal based on, *inter alia*, the acute and
12 ongoing impact of the global pandemic. For felony cases, the “last day” is generally extended
13 30 calendar days. When a statutory last day is extended, the case is given a “return” date in
14 the Master Trial Calendar department (D26) and the case is on standby for trial (i.e. the trial
15 date is “trailed”) until the “return date.” The case is not “continued” to a new trial date in
16 D26. When the case is given a “return” date in D26, that date is not the next earliest day for
17 trial, that date is a placeholder date to return to court for the court to further manage the case
18 and, if necessary, determine if there is good cause to further extend the statutory “last day” in
19 the event the case has not been tried or resolved by the return date. As such, any TNW case
20 can be assigned into a trial department at any time, even before its “return” date in D26.

21 When felony cases appear on the TNW trial calendar for the first time and are not sent
22 to a trial department, the court may assign them “for Settlement/Indicated Sentence while on
23 standby for trial” to one of our Assigned Judges. If a case is TNW for trial, it should be trial
24 ready, fully developed, pretrial motions resolved, in limine motions filed, witness lists
25 exchanged, and Readiness briefs filed in recognition of the initial statutory “last day” when it
26 appears before an Assigned Judge. If the parties do not reach an agreement and the Assigned
27 Judge gives an indicated sentence, the trial departments will have no further obligation to
28 provide an indicated sentence when the case reaches a trial department. Trial judges will not

1 read or consider a Readiness brief without consent as described in section 1204.5(a). The
2 Assigned Judges may have multiple discussion sessions with the parties on a given case if the
3 parties need to do work to settle the case. Once an Assigned Judge is “done” working on a
4 case, the court will not send the case back for further rounds of the process absent unusual
5 circumstances.

6 **Cases Currently Set on the TNW Felony Calendar:** Starting the week of 2/7/22, for cases
7 already set on the TNW felony trial calendar and that have had or are having their original
8 statutory “last day” extended when called on that calendar, the court will order the parties to
9 prepare and file *in limine* motions, witness lists, and a Readiness brief by the next return date
10 in D26 if the case is not being immediately assigned to a trial department.

11 **Case Priorities and Goals:** On the felony TNW trial calendar, the court will attempt to
12 balance seriousness of charges, custodial status, § 1048, age of case, and any other relevant
13 factors in prioritizing and making assignments to trial departments. Input from the parties is
14 welcome and helpful at the weekly remote Readiness Conference held on the court day
15 immediately preceding the trial date. When parties have particular readiness issues (illness,
16 COVID-19 protocols, witness unavailability, attorney engaged in another trial or otherwise
17 unavailable, etc.) the court will note these issues on the record and keep them in consideration
18 when trialing cases on standby for trial.

19 It is a goal of the court to see less time spent negotiating and discussing cases in the
20 trial departments and more time spent with those resources conducting trial proceedings.
21 Felony cases will be assigned to trial departments for trial, not for protracted “shakedown.”
22 The trial judge will have all in limine motions and witness lists in the court file based on the
23 initial filing deadlines and will have the ability to review them immediately upon assignment
24 to that department.

25 **TNW Misdemeanor Trial Cases**

26 **New Misdemeanor TNW Trial Settings:** Starting the week of 2/7/22, when a misdemeanor
27 case is set for trial TNW, due to local conditions and needs, the court will set the initial trial
28 date on, or on the week of, the statutory “last day for trial” (Pen. Code § 1382). Therefore,

1 when cases are set for trial TNW, the cases and the parties should be trial ready on the initial
2 trial date in recognition of the statutory “last day.” To ensure the parties fulfill their
3 commitment to a TNW trial setting, the court will also set the following dates which will be
4 reflected in the minutes:

5 The date for filing *in limine* motions, witness lists, and a required Readiness brief³
6 which will be 5 calendar days before the initial TNW trial date.

7 Readiness briefs shall include, but need not be limited to:

- 8 1. Prosecution: a statement of facts expected to be shown by the evidence; perceived
9 factors in aggravation; factors in mitigation; criminal history information, including
10 prior performance on probation and/or parole; other pending cases and their status; the
11 history of prosecution settlement offers; the history of defense settlement proposals;
12 any indicated sentences previously given by the court; whether collateral
13 consequences have been considered; considerations of substance abuse/mental health
14 and treatment, if pertinent; consideration of the merits of diversion.
- 15 2. Defense: any information about the defendant that the defendant consents to a trial
16 judge considering, and/or that the defendant desires a judge who is not the trial judge
17 to consider pursuant to Penal Code section 1204.5, or a statement that the defendant
18 chooses to defer providing such information without prejudice.

19 On the initial TNW trial date, the court may find good cause to extend the statutory “last
20 day” for consideration of an order of dismissal based on, *inter alia*, the acute and ongoing
21 impact of the global pandemic. For misdemeanor in-custody cases, the “last day” is generally
22 extended 30 calendar days. For misdemeanor out-of-custody cases, the “last day” is generally
23 extended 60 calendar days. When a statutory last day is extended, the case is given a “return”
24 date in the Master Trial Calendar department (D26) and the case is on standby for trial (i.e.
25 the trial date is “trailed”) until the “return date.” The case is not “continued” to a new trial
26 date in D26. When the case is given a “return” date in D26, that date is not the next earliest
27 day for trial, that date is a placeholder date to return to court for the court to further manage

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³ Cal. Rule of Court 4.112(a); Pen. Code § 1204.5(b).

1 the case and, if necessary, determine if there is good cause to further extend the statutory “last
2 day” in the event the case has not been tried or resolved by the return date. As such, any TNW
3 case can be assigned into a trial department at any time, even before its “return” date in D26.

4 When misdemeanor cases appear on the TNW trial calendars, the court may assign them
5 “for Settlement/Indicated Sentence while on standby for trial” to one of our Assigned Judges.
6 The court will look to make such assignments no later than the second time a statutory “last
7 day” is being extended. If a case is TNW for trial, it should be trial ready, fully developed,
8 pretrial motions resolved, *in limine* motions filed, witness lists exchanged, and Readiness
9 briefs filed in recognition of the initial statutory “last day” when it appears before an Assigned
10 Judge. If the parties do not reach an agreement and the Assigned Judge gives an indicated
11 sentence, the trial departments will have no further obligation to provide an indicated sentence
12 when the case reaches a trial department. Trial judges will not read or consider a Readiness
13 brief without consent as described in section 1204.5(a). The Assigned Judges may have
14 multiple discussion sessions with the parties on a given case if the parties need to do work to
15 settle the case. Once an Assigned Judge is “done” working on a case, the court will not send
16 the case back for further rounds of the process absent unusual circumstances.

17 **Cases Currently Set on the TNW Misdemeanor Calendars:** Starting the week of 2/7/22, for
18 cases already set on the TNW misdemeanor trial calendars and that have had or are having
19 their original statutory “last day” extended when called on those calendars, the court will
20 order the parties to prepare and file *in limine* motions, witness lists, and a Readiness brief no
21 later than 5 calendar days before their next return date in D26 if the case is not being
22 immediately assigned to a trial department.

23 **Case Priorities and Goals:** On the misdemeanor TNW trial calendars, the court will attempt
24 to balance seriousness of charges, custodial status, § 1048, age of case, and any other relevant
25 factors in prioritizing and making assignments to trial departments. Input from the parties is
26 welcome and helpful at the weekly remote Readiness Conference held on the court day
27 immediately preceding the trial date. When parties have particular readiness issues (illness,
28 Covid protocols, witness unavailability, attorney engaged in another trial or otherwise

1 unavailable, etc.) the court will note these issues on the record and keep them in consideration
2 when trailing cases on standby for trial.


3 It is a goal of the court to see less time spent negotiating and discussing misdemeanor
4 cases in the trial departments and more time spent with those resources conducting trial
5 proceedings. It is also a goal of the court to utilize all trial departments for TNW
6 misdemeanor trials as available. Misdemeanor cases will be assigned to trial departments for
7 trial, not for protracted “shakedown.” The trial judge will have all *in limine* motions and
8 witness lists in the court file based on the initial filing deadlines and will have the ability to
9 review them immediately upon assignment to that department.

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11 **All TNW Cases - Scheduling the Assignment of Cases to**
12 **Assigned Judges and Trial Departments**

13 The court and the parties must give TNW trial matters, particularly those that are
14 trailing beyond an initial statutory “last day,” extremely high, if not the highest, priority.
15 Thus, the court will look to assign cases at the earliest possible time of day or day of the week
16 when Assigned Judge and trial department resources are available. Attorneys should not
17 expect the court to accommodate an attorney’s schedule for lower priority court matters or
18 non-court conflicts.

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20 **IT IS SO ORDERED.**

21 Dated: February 2, 2022

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23 HON. DANIEL T. NISHIGAYA
24 JUDGE OF THE SUPERIOR COURT
25 SUPERVISING JUDGE, CRIMINAL DIVISION
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