

IN THE SUPERIOR COURT OF DEKALB COUNTY
STONE MOUNTAIN JUDICIAL CIRCUIT
STATE OF GEORGIA

IN RE: *
Declaration of Judicial Emergency *
*
Date: June 7, 2021 *
*

21AP1156

ORDER DECLARING JUDICIAL EMERGENCY (15th)

(Extended through June 30, 2021 at 11:59 p.m.)

On March 14, 2020, in response to the COVID-19 pandemic, the Honorable Harold D. Melton, as the Chief Justice of the Supreme Court of Georgia, issued an Order Declaring Statewide Judicial Emergency pursuant to OCGA § 38-3-61. That Order has been extended fourteen times, with modifications, by orders issued on April 6, May 11, June 12, July 10, August 11, September 10, October 10, November 9, and December 9, 2020 (with Section I (B) relating to conducting jury trials modified on December 23, 2020), and on January 8, February 7, March 9, April 8, and May 8, 2021.

After consulting with the Judicial Council of Georgia and other judicial partners, and because the novel coronavirus continues to significantly affect Georgia’s judicial system, it is hereby determined that the Order should be extended again. **However, as discussed in the Notice of Expected Termination of Statewide Judicial Emergency on June 30, 2021 issued separately today by the Chief Justice, it is anticipated that the Public Health State of Emergency declared by the Governor may expire at 11:59 p.m. on Wednesday, June 30, 2021. Accordingly, the Order Declaring Statewide Judicial Emergency, which would have expired on Monday, June 7, 2021, at 11:59 p.m., is further extended but only until Wednesday, June 30, at 11:59 p.m. If the Public Health State of**

Emergency expires before June 30, the Order Declaring Statewide Judicial Emergency will expire at the same time by operation of law. Until this Order expires, all Georgia courts shall continue to operate under the requirements set forth in the Order as extended, as discussed below. However, **courts and litigants should prepare for the expiration of the statewide judicial emergency.**

All prior orders are available online, including on the Supreme Court’s website, www.gasupreme.us, and an overview of the orders is provided in Section VII below. This extension order varies substantially from the prior orders as our State and its judicial system emerge from the pandemic. However, judges, lawyers, and litigants should be familiar with the prior orders to the extent that certain of their provisions may continue to affect particular matters. Where this order refers to “public health guidance,” courts should consider the most specific current guidance provided by the federal Centers for Disease Control and Prevention (CDC), the Georgia Department of Public Health (DPH), and their local health departments.

I. Deadlines and Other Time Schedules and Filing Requirements

(A) **All deadlines suspended and tolled on March 14, 2020.** Pursuant to OCGA 38-3-62, the initial March 14, 2020 Order suspended, tolled, extended, and otherwise granted relief from any deadlines and other time schedules and filing requirements (referred to collectively herein as “deadlines”) imposed by otherwise applicable statutes, rules, regulations, or court orders in civil and criminal cases and administrative matters.

(B) **Most deadlines on litigants reimposed as of July 14, 2020.** With the exceptions discussed below, deadlines were reimposed on *litigants* effective July 14, 2020.

(C) **Deadlines not reimposed on courts.** Recognizing the substantial backlogs of pending cases, deadlines imposed on *courts* have remained suspended and tolled. All courts should nevertheless work diligently to clear backlogs and to comply with usual deadlines and timetables to the extent safe and practicable.

(D) **Most grand jury and jury trial deadlines remain tolled.** Due to the lengthy prohibition on almost all grand jury proceedings and all jury trials and the substantial backlogs of unindicted and untried criminal cases, deadlines for jury trial

proceedings (including statutory speedy trial demands), deadlines for grand jury proceedings (with the exception of the statutory deadlines to indict detained individuals in OCGA §§ 17-7-50 and 17-7-50.1), and deadlines calculated by reference to the date of a civil or criminal jury trial or grand jury proceeding remain suspended and tolled. This provision does not apply to deadlines calculated by reference to the date of non-jury (bench) trials. Statutes of limitation in criminal cases also remain tolled.

(E) Deadlines for indicting detained individuals reimposed as of May 14, 2021. Because at least one grand jury should generally be able to operate safely in all counties, **the deadlines in OCGA §§ 17-7-50 and 17-7-50.1 for presenting cases involving detained individuals to the grand jury are reimposed effective May 14, 2021.**

(F) Guidance on tolling and calculation of new deadlines. Guidance on the tolling of filing deadlines and statutes of limitations and on deadlines and time limits calculated by reference to terms of court are included in the appendix to this order. Explanations and examples of how to calculate deadlines that were tolled on March 14, 2020 and later reimposed are provided in Section II of the July 10, 2020 extension order.

(G) Extensions of time. Litigants may apply in the normal way for extensions of reimposed deadlines for good cause shown, and courts should be generous in granting extensions particularly when based upon health concerns, economic hardship, lack of childcare, or other caregiving responsibilities.

(H) Reimposition of all deadlines when the judicial emergency expires. Courts and litigants should be aware that when this statewide judicial emergency order expires, *all* deadlines not already reimposed will immediately be reimposed (unless tolled by an applicable local judicial emergency order).

(I) Authority of superior and state courts to continue tolling of statutory speedy in pretrial requirements under Senate Bill 163. Courts and litigants should be aware that the General Assembly has passed Senate Bill 163 which, if signed by the Governor, will take effect on July 1, 2021. SB 163 authorizes the Chief Judge of a superior court or state court to toll, extend, modify, or otherwise grant relief from the statutory speedy trial requirements in OCGA §§ 17-7-170 and 17-7-171 *following* a judicial emergency if compliance with such requirements is impracticable in a particular county. An order granting such relief must be supported by a certification that considers specified factors and includes a plan to resolve cases in which a statutory speedy trial demand has been filed as expeditiously as possible. Each order is for a period of no more than eight months, and the authority granted by SB 163 will expire (sunset) on June 30, 2023. Model SB163 orders and certifications are being

developed by the councils of superior and state court judges.

(J) Courts and litigants should also be aware of House Bill 635, which, if signed by the Governor, will provide additional tools to resolve backlogs of criminal cases, including broadened authority for superior courts to select juries and try cases in alternative facilities where greater social distancing may be possible; discretion of courts to try certain cases without a jury when the defendant so elects, even if the prosecutor requests a jury trial; and broadened authority of prosecutors to initiate certain cases by accusation rather than indictment. The latter two provisions will expire on June 30, 2022.

II. Proceedings Conducted Remotely Using Technology

(A) **Continued use of remote proceedings where legal, practicable, and safer.** All courts should continue to use technology to conduct remote judicial proceedings when doing so is a safer alternative to in-person proceedings, unless the proceeding is required by law to be in-person or it is not practicable for technical or other reasons for persons participating in the proceeding to participate remotely.

(B) **Emergency rule amendments.** Courts should understand and utilize the authority provided and clarified by the emergency amendments made to court rules on video conferences and teleconferences.

(C) **Compelled participation.** Courts may compel the participation of litigants, lawyers, witnesses, and other essential personnel in remote judicial proceedings, where allowed by court rules (including emergency amendments thereto). Such proceedings, however, must be consistent with public health guidance, must not impose undue burdens on participants, and must not be prohibited by the requirements of the United States or Georgia Constitutions or applicable statutes or court rules.

(D) **Consent to remote proceedings when not otherwise authorized.** In civil, criminal, juvenile, and administrative proceedings, litigants may expressly consent in the record to remote proceedings not otherwise authorized and affirmatively waive otherwise applicable legal requirements.

(E) **Ensuring public access and defendant's rights.** Courts must ensure the public's right of access to judicial proceedings as required by law. In addition, in all criminal cases, courts must ensure the defendant's right to confrontation and right to a public trial unless the defendant affirmatively waives such right in the record.

(F) **Evaluation of proceedings that should be conducted remotely even**

when not required for public health reasons. The pandemic has required courts to greatly expand the use of remote proceedings, which have been found to have both advantages (including significant savings in time and travel for participants) and disadvantages (including loss of in-person interactions and technical concerns, particularly in areas with poor internet service and for participants with limited access to or familiarity with the technology used). Courts should evaluate which of their proceedings should continue to be conducted remotely after the judicial emergency ends and, to the extent permanent amendments to court rules or statutes are needed to allow or improve such remote proceedings, courts should advise their court councils.

III. In-Person Proceedings Including Jury Trials and Grand Jury Proceedings

(A) **General discretion to conduct in-person proceedings under court operating guidelines when safe and lawful.** Courts have discretion to conduct in-person judicial proceedings under the court's operating guidelines discussed in Section III (F) below, but only in compliance with public health guidance, this order, and the requirements of the United States and Georgia Constitutions and applicable statutes and court rules, including the public's right of access to judicial proceedings and a criminal defendant's rights to confrontation and an open courtroom. No court may compel the attendance of any person for a court proceeding if the court proceeding or the court facility in which it is held is not in compliance with this order. Courts should be particularly aware of scheduling proceedings that require numerous people to be in the courtroom or courthouse common areas, including large calendar calls.

(B) **Grand jury proceedings.** The Chief Judge of each superior court, in his or her discretion after consulting with the District Attorney, may authorize grand jury proceedings in-person or remotely (where consistent with law). Guidance for safely conducting in-person grand jury proceedings and guidance on conducting remote grand jury proceedings are included in the Appendix to this order. Courts and counsel are reminded that many criminal cases may proceed by accusation rather than grand jury indictment, and if House Bill 635 is signed into law, prosecutors will have broadened authority to proceed by accusation.

(C) **Jury trials.** The Chief Judge of each trial court is authorized, in his or her discretion, to authorize the summoning of trial jurors and the conducting of jury trials in accordance with a final jury trial plan developed in collaboration with the local committee and incorporated into the court's operating guidelines as discussed in Section III (F) (3) below. Potential jurors should be informed in advance about the practices that the court will use to ensure their safety.

(D) **Continued tolling of most deadlines related to grand jury proceedings**

and jury trials. As detailed in Section I (D) and (E) above, because of the substantial backlogs of unindicted and untried cases and because grand jury proceedings and jury trials even when resumed will not occur at the scale or with the speed as before the pandemic, deadlines calculated by reference to the date of grand jury proceedings or jury trials, including but not limited to the speedy trial deadlines in OCGA §§ 17-7-170 and 17-7-171, remained suspended and tolled, although the deadlines for indicting detained individuals in OCGA §§ 17-7-50 and 17-7-50.1 are reimposed as of May 14, 2021.

(E) **ADR proceedings.** Courts may not compel in-person participation in any court-imposed alternative dispute resolution (ADR) session that is to be conducted in a manner inconsistent with applicable public health guidelines.

(F) **Operating guidelines for in-court proceedings.** Each court is required to have developed and implemented written guidelines as to how in-court proceedings generally, as well as particular types of proceedings including grand jury proceedings and jury trials, will be conducted to protect the health of litigants, lawyers, jurors, judges, court personnel, and the public.

(1) **Guidelines should be based on bench card and public health guidance.** The “Georgia Court Reopening Guide” bench card included in the Appendix to this order should be used as the template for such operating guidelines, which at a minimum should include all subject matters contained therein. Courts should also consider guidance from local health departments and guidance provided by CDC and DPH; if local public health guidance is more restrictive than the bench card, the local public health guidance should be followed instead.

(2) **Isolation, quarantine, and notification requirements.** With regard to everyone who works in a court facility, the operating guidelines shall require isolation of any person with known or suspected COVID-19 and quarantine of any person with COVID-19 exposure likely to result in infection, in accordance with the DPH Twelfth Amended Administrative Order for Public Health Control Measures, a link to which may be found in the Appendix, or any subsequent version thereof. When there is reason to believe that anyone who works at or has visited a court facility has been exposed to COVID-19, DPH or the local health department shall be notified, and notification of persons who may have been exposed shall occur as directed by DPH or the local health department.

(3) **Local committees and jury trial plans.** Every county should have a local committee of judicial system participants, convened by the Chief Judge of the county’s superior court, which is charged with developing a plan for safely resuming jury trials in the county as further described in the “Guidance for Local

