IN THE SUPERIOR COURT OF HART COUNTY
STATE OF GEORGIA

FILED IN OFFICE
HART SUPERIOR COURT
2022 FEB 16 PM 3:22
FRANCIE H. GRIFFIN, CLERK

ORDER GRANTING RELIEF FROM STATUTORY SPEEDY TRIAL REQUIREMENTS PURSUANT TO O.C.G.A. § 38-3-62 (b)

The requirements for filing of a statutory speedy trial demand imposed by O.C.G.A. §§17-7-170 and 17-7-171 were previously reinstated pursuant to the Order Granting Relief from Statutory Speedy Trial Requirements previously filed on August 13, 2021. That Order also tolled the time constraints to bring a case to trial imposed by O.C.G.A. §§ 17-7-170 and 17-7-171. Such tolling is set to expire on February 20, 2022 at 11:59 P.M. However, based upon the certification attached hereto and incorporated herein as Exhibit A, the time constraints to bring a case to trial imposed by O.C.G.A. §§17-7-170 and 17-7-171 will remain tolled in the Superior Court of Hart County within the Northern Judicial Circuit effective February 21, 2022, and for the duration of this Order.

Pursuant to O.C.G.A. § 38-3-62 (b) (9), an order granting relief from statutory speedy trial requirements following a judicial emergency shall not exceed a total of eight months and shall end on the last day of a term of court, and pursuant to O.C.G.A. § 38-3-62 (b) (13), no such order shall issue after June 30, 2023. Pursuant to the Supreme Court's *Guidance on the Extension of Deadlines and Time Limits Defined by Reference to Terms of Court Under the Chief Justice's Order Declaring Statewide Judicial Emergency*, interrupted terms of court do not count in the calculation of deadlines and time limits for statutory speedy trial demand purposes. This Order shall become effective on the 21st day of February, 2022, and it shall terminate on the 20th day of August, 2022, at 11:59 P.M., a date that is: (1) not more than eight months from the date it is entered; and (2) the last day of a term of the Superior Court of Hart County, unless statutory speedy trial requirements are reinstated by the Chief Justice of the Georgia Supreme Court pursuant to O.C.G.A. § 38-3-62 (b) (11). Pursuant to O.C.G.A. § 38-3-62 (b) (12), nothing in this

Order shall relieve the State of its constitutional obligation to provide for a speedy and public criminal trial.

It is hereby ORDERED that this Order shall be filed with the Clerk of Superior Court in Hart County to be filed in the General Docket.

Pursuant to O.C.G.A. § 38-3-63 (1)-(2), it is further ORDERED that a copy of this Order be immediately served by e-mail upon the Chief Justice of the Georgia Supreme Court, the judges and clerks of all courts in this county, the Clerk of the Georgia Court of Appeals, and the Clerk of the Georgia Supreme Court.

Further, it is ORDERED that notice of the issuance of this Order be given to the affected parties, counsel for the affected parties, and the public in a manner that meets the requirements of O.C.G.A. § 38-3-63 (3) and specifically as follows: the following shall be personally served with a copy of this Order via email: The Hart County Sheriff's Office, who shall post a copy of this Order on the publication notification site at the Courthouse; the Clerk of Superior Court of Hart County, who shall post a copy of this Order on its website; the Northern Judicial Circuit District Attorney's office; the Northern Judicial Circuit Public Defender's office; and the president of the Northern Judicial Circuit Bar Association, who shall email a copy of this Order to all bar association members.

SO ORDERED this 16 day of February, 2022.

Honorable Jeffrey S. Malcom, Chief Judge
Northern Judicial Circuit

EXHIBIT A - CERTIFICATION

Pursuant to O.C.G.A. § 38-3-62 (b) (3), the Chief Judge along with a majority of the active Superior Court Judges of the Northern Judicial Circuit certify as follows:

(1)

Pursuant to O.C.G.A. § 38-3-62 (b) (2), under the totality of the circumstances arising from the statewide judicial emergency first declared by Chief Justice of the Georgia Supreme Court pursuant to O.C.G.A. § 38-3-61 on the 14th day of March, 2020 and ending on the 30th day of June, 2021, inclusive of any modifications or extensions thereof, compliance with the statutory speedy trial requirements established in O.C.G.A. §§ 17-7-170 and 17-7-171 is impracticable in the Superior Court of Franklin County within the Northern Judicial Circuit.

(2)

Pursuant to O.C.G.A. § 38-3-62 (b) (2) (B) (i), the pending criminal case volume in the Superior Court of Hart County is substantially above the average pending criminal case volume that existed at the end of each of the three full calendar years immediately preceding the initial declaration of the applicable judicial emergency. The pending criminal case volume in the Superior Court of Hart County currently totals: 1,083 as of January 5, 2022; the pending criminal case volume that existed in (2019) totaled: 1,204; the pending criminal case volume that existed in (2018) totaled: 1,077; and the pending criminal case volume that existed in (2017) totaled 1,043.

(3)

Pursuant to O.C.G.A. § 38-3-62 (b) (2) (B) (ii), the annualized criminal case clearance rate in the current calendar year in the Superior Court of Hart County is substantially below the average criminal case clearance rate for each of the three full calendar years immediately preceding the initial declaration of the applicable judicial emergency. The annualized criminal case clearance rate in the Superior Court of Hart County in the current calendar year is: 135 percent[1]; the annualized criminal case clearance rate that existed in (2019) was: 97.5 percent; the annualized criminal case clearance rate that existed in (2018) was: 112.5 percent; and the annualized criminal case clearance rate that existed in (2017) was: 122.8 percent.

[1] The data for this Certification was compiled in late January 2022. Because this Order is being filed February of 2022, values for the current calendar year only reflect values from part of the month of January.

(4)

Pursuant to O.C.G.A. § 38-3-62 (b) (2) (B) (iii), the number of speedy trial demands pending within one month of the date of this certification in the Superior Court of Hart County totals: 65.

(5)

Pursuant to O.C.G.A. § 38-3-62 (b) (2) (B) (iv), the number of jury trials held during the last term of court in the Superior Court of Hart County was 5.

(6)

Pursuant to O.C.G.A. § 38-3-62 (b) (2) (B) (v), the following ongoing space limitations or other health or safety concerns exist within the Superior Court of Hart County that limit the use of facilities available to conduct criminal trials and related activities: There are two courtrooms available in the Hart County Courthouse. The main courtroom can accommodate a jury trial; however, it is also shared with other classes of courts within Hart County. Social distancing remains an issue in Courtroom 2 as it can only hold 12 people, respectively, and still be in compliance with social distancing guidelines. This severely limits the use of the courtroom for jury selections and can interfere with the rights of the public to access and view trial proceedings. The previously-used jury room does not comply with social distancing requirements, and as such times for trials have been lengthened to facilitate sequestering the jury in appropriately-sized rooms farther away from the courtroom. The number of masks available for jury members and court personnel greatly fluctuates, especially during trial weeks, such that it has been necessary to receive extra masks from other courts rather than relying on its own supply.

(7)

Pursuant to O.C.G.A. § 38-3-62 (b) (2) (B) (vi), there is a limited availability of judges, courtroom personnel, prosecutors, public defenders, expert witnesses, forensic analysis, law enforcement officers, or other relevant persons in the Superior Court of Hart County, as follows: The Northern Judicial Circuit covers four other counties other than Hart County and there are only three superior court judges within the circuit, which makes it difficult for the judges to consistently preside over trials in addition to their other responsibilities such as presiding over hearings related to bonds, probation revocations, and motions in criminal matters and managing their civil docket. The superior court requested and secured 100 days for senior judges, through the American Rescue Plan Act Grant, to allow the active judges to preside over additional trials. These 100 days for

senior judges will allow approximately six (6) additional trial weeks in 2022. Additionally, there is limited availability of personnel within the District Attorney's office, the Public Defender's office and the office of the clerk of superior court. There is only one (1) prosecutor and one (1) public defender allocated for Hart County and there are only two (2) investigators for the District Attorney and one (1) investigator for the Public Defender. The clerk's office only has two (2) deputy clerks over the criminal division.

(8)

Pursuant to O.C.G.A. § 38-3-62 (b) (2) (B) (vii), the extent of efforts made by prosecuting attorneys and the court to reduce the number of criminal defendants held in custody awaiting trial in the Superior Court of Hart County are as follows: the District Attorney's office has been entering into bond agreements with criminal Defendants being held for misdemeanor and non-violent felony charges and promptly conveying plea offers to criminal defendants held in custody when they are in possession of sufficient information. The Courts have made efforts by issuing "own recognizance" bonds for Defendants being held for misdemeanor and/or non-violent charges and there has been a prioritization of incarcerated Defendant on trial calendars.

(9)

Pursuant to O.C.G.A. § 38-3-62 (b) (2) (B) (viii), other relevant facts that justify ongoing relief from statutory speedy trial requirements in the Superior Court of Hart County, if any, are as follows: Only 39% of Hart County residents are fully vaccinated,[2] and the need to ensure a sufficient number of jurors can be comprised of residents from the county requires extending the period for speedy trials.

(10)

Pursuant to O.C.G.A. § 38-3-62 (b) (4) (B), the following plan to resolve cases in which a statutory speedy trial demand has been filed as expeditiously as possible in the Superior Court of Hart County has been established. It is hereby ordered that any case in which a valid statutory speedy trial demand has been filed shall be prioritized for trial, with the highest priority being given to any such case in which: (1) the defendant is in custody while awaiting trial; and (2) the defendant is in custody as a result of the charges in the case in which the statutory speedy trial

[2] Source: GA DPH Vaccine Distribution Dashboard
https://experience.arcgis.com/experience/3d8eea39f5c1443db1743a4cb8948a9c (Accessed January 4, 2022)

demand has been filed. Such cases shall be further prioritized for trial based upon the length of time that the defendant has remained in custody awaiting trial.

(11)

Pursuant to O.C.G.A. § 38-3-62 (b) (4) (B), in the Superior Court of Hart County, Chief Judge Jeffrey S. Malcom has been scheduled for 3 trial weeks during the period of this Order; Judge Chris R. Phelps has been scheduled for 2 trial weeks during the period of this Order; and Judge Harvey Wasserman has been scheduled for 4 trial weeks during the period of this Order. Additional trial weeks may be added during the period of this Order.

This Order has been entered:

☒ by the undersigned Chief Judge pursuant to O.C.G.A. § 38-3-62 (b) (3) (A); **or**

☐ at the request of a majority of the active judges of this Court who are serving in this Judicial Circuit as evidenced by their written request, which is attached as Exhibit B to this Order, pursuant to O.C.G.A. § 38-3-62 (b) (3) (B) (i).

IT IS SO ORDERED this 16th day of February, 2022.

Honorable Jeffrey S. Malcom, Chief Judge
Hart County Superior Court
Northern Judicial Circuit