

FILED IN OFFICE

4/28/2022

Theresa A. Banne

SUPREME COURT OF GEORGIA

**IN THE SUPERIOR COURT OF FULTON COUNTY
ATLANTA JUDICIAL CIRCUIT
STATE OF GEORGIA**



2022-EX-000494

In Re:

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

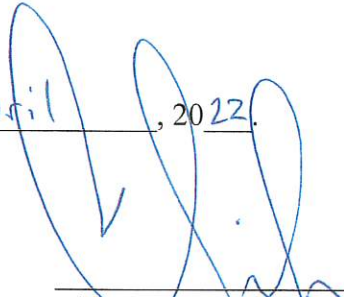
Pursuant to O.C.G.A. § 38-3-62 (b), based upon the findings and certification attached hereto and incorporated herein as Exhibit A, this Court hereby suspends, tolls, extends, and otherwise grants relief from the time deadlines within which to try a case for which a demand for speedy trial has been filed pursuant to O.C.G.A. §§ 17-7-170 and 17-7-171 in the Superior Court of Fulton County within the Atlanta Judicial Circuit.

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. This Court previously entered an order pursuant to this Code section which ran from 12:00 a.m. on the 29th day of September, 2021, until 11:59 p.m. on May 1, 2022. Accordingly, this Order is effective at 12:00 a.m. on the 2nd day of May, 2022, and it shall terminate at 11:59 p.m. on the 1st day of January, 2023, 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 court for the Atlanta Judicial Circuit, 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.

ORDER SUSPENDING DEADLINES UNDER O.C.G.A. § 38-3-62 (b)

It is hereby ORDERED that this Order shall be filed with the clerk of Superior Court of Fulton 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), including but not limited to posting the Order and Certification on this Court's website, posting the Order and Certification in conspicuous areas of the Courthouse Complex, and sending copies of the Order and Certification to local bar associations, as has been done with all previous emergency orders issued by this Court.

SO ORDERED this 28th day of April, 2022.



Christopher S. Brasher, Chief Judge
Superior Court of Fulton County
Atlanta Judicial Circuit

EXHIBIT A - CERTIFICATION

Pursuant to O.C.G.A. § 38-3-62 (b) (3), the Chief Judge of the Atlanta Judicial Circuit FINDS and CERTIFIES, as required by O.C.G. A. § 38-3-62 (b) (4) (B), that compliance with the statutory speedy trial requirements is impracticable in the Superior Court of Fulton County, Atlanta Judicial Circuit. Specifically, the undersigned finds and certifies 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 the 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, and the local judicial emergency declared by the undersigned on July 1, 2021, and ending at 11:59 p.m. on September 28, 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 Fulton County within the Atlanta Judicial Circuit.

Pursuant to O.C.G.A. § 38-3-62 (b) (2) (B) (i), the pending criminal case volume in the Superior Court of Fulton County **of indicted felony cases** currently totals: **4,017** (four thousand and seventeen) cases. It is critical to note that the number of felony criminal cases having been indicted during the statewide and local judicial emergencies is substantially lower than the number of persons arrested for felony charges during that same period. The pending criminal case volume of **unindicted felony cases** (*i.e.*, the number of defendants arrested for felony criminal charges whose cases have not yet been presented to the grand jury) totals: **11,955** (eleven thousand nine hundred fifty-five). Thus, the combined total of pending **unindicted and indicted felony criminal matters** is 15,972 (fifteen thousand nine hundred seventy-two).

The pending **indicted** criminal case volume that existed in 2019 totaled: 4,918 (four thousand nine hundred and eighteen) cases; the pending criminal case volume that existed in 2020 totaled: 4,723 (four thousand seven hundred and twenty-three) cases; and the pending criminal case volume that existed in 2021 totaled 3425 (three thousand four hundred and twenty-five) cases.

(2)

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 Fulton County is set forth below, along with 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 Fulton County in the most recent calendar year is: 102 % percent. However, as noted above, the number of felony criminal cases having been indicted during the statewide and local judicial emergencies is substantially lower than the number of persons arrested for felony charges during that same period. Thus, the current year clearance rate does not accurately portray the rate of the disposition of all pending (albeit unindicted) criminal matters.

The annualized criminal case clearance rate that existed in 2020 was: 97.5 %; the annualized criminal case clearance rate that existed in 2019 was: 80 %; and the annualized criminal case clearance rate that existed in 2018 was: 83.5 %.

(3)

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 Fulton County totals 51.

(4)

Pursuant to O.C.G.A. § 38-3-62 (b) (2) (B) (iv), the number of jury trials held during the two Terms of Court since the beginning of 2022 was 26.

(5)

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 Fulton County that limit the use of facilities available to conduct criminal trials and related activities: Given the persistent public health concerns regarding the community spread of COVID-19, significant limitations still exist in the court facilities of the Superior Court of Fulton County. Specifically, our Court continues to require (in addition to other precautions) masking in all public spaces and courtrooms. We are unable to conduct jury selection in all but two of the dozens of courtrooms in these facilities. Our Court continues to utilize these two larger courtrooms on a rotating basis, but this limitation significantly hampers our capacity to select juries and try cases. Moreover, even after (hopefully)

the lifting of COVID-19 safety protocols, our Court will continue to face significant space limitations in view of the number of criminal cases that will require courtroom appearances. This will remain true despite our Court's acquisition of additional spaces outside the Courthouse facilities that will be used for the hearing and trial of matters that do not present significant security risks. Additionally, as the largest and busiest Court in our State, the Superior Court of Fulton County will continue to face space and security limitations as to the transport and holding of inmates brought to the Courthouse, as well as space limitations regarding the summoning of jurors for jury selection,

(6)

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 analysts, law enforcement officers, or other relevant persons in the Superior Court of Fulton County, as follows: Our Court will continue to face a short-fall of judges available to handle the significant increase in criminal cases. Our Court has implemented a robust plan to utilize senior judges to augment the Court's capabilities, but those senior judge resources are in short supply as many superior courts across the state vie for those same resources.

(7)

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 Fulton County are as follows: Efforts by the District Attorney, Public Defender, and this Court to reduce the number of criminal defendants in custody awaiting trial include focusing trial efforts on cases where defendants are in custody, and regularly reviewing the jail census to identify cases that can be resolved short of indictment and/or trial, or where defendants can be released on bond. Also, our Court system is using two concurrent grand juries as authorized by O.C.G.A. § 15-12-163. Moreover, the District Attorney's Office has dedicated increased staff to the review and preparation of serious violent felony cases, has prioritized said cases for presentation to the grand jury, and has dedicated significant additional resources to reviewing and resolving cases prior to indictment, where appropriate.

(8)

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 Fulton County, if any, are as follows: While the justice system in Fulton County is large and complex, our Court faces the same limitations and challenges faced by courts across Georgia. Specifically, we do not have the personnel, physical plant, technology, or other resources necessary to adjudicate all pending matters within the time allotted under O.C.G.A. §§ 17-7-170 and 17-7-171. These practical limitations on capacity have been, and continue to be, exacerbated by the lingering effects of the COVID-19 pandemic on the operations of our Court system. Specifically, our Court cannot summon large numbers of jurors for jury selection. We cannot have large (pre-COVID) numbers of defendants brought to the Courthouse from the jail, or have large in-person calendar calls.

(9)

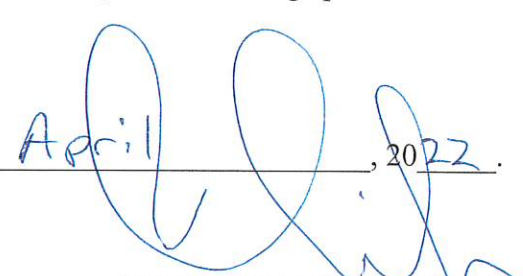
Pursuant to O.C.G.A. § 38-3-62 (b) (4) (B), the following plan to resolve cases in which a statutory speedy trial demand has been filed as expeditiously as possible in the Superior Court of Fulton County has been established. It is hereby ordered that any case in which a valid statutory speedy trial 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 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. Additionally, the following specific plan to resolve cases in which a statutory speedy trial demand has been filed as expeditiously as possible shall apply in the Superior Court of Fulton County during the time this Order remains in effect: Utilizing funds allocated to the court system in Fulton County by the Fulton County Board of Commissioners from both general funds and monies received under the American Rescue Plan Act of 2021 (“ARPA”), our Court expanded its capacity to adjudicate cases by 25% over the next three years in order to address criminal matters the adjudication of which has been delayed by the COVID-19 Pandemic and the judicial emergencies. This expanded capacity involves both increased use of technology in remote proceedings, as well as additional personnel in this Court and in all the agencies within our criminal justice system in Fulton County. Additionally, our Court will continue to prioritize the disposition of criminal cases where the accused remains in custody, and those that have been pending the longest.

(10)

Pursuant to O.C.G.A. § 38-3-62 (b) (4) (B), in the Superior Court of Fulton County, by use of a rotating schedule by which each judge may select a jury in a felony criminal case twice each month, each of the 15 active Superior Court judges who handle felony criminal matters will be scheduled for at least two trial weeks per month 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).

So certified this 28th day of April, 2022.



Christopher S. Brasher, Chief Judge
Superior Court of Fulton County
Atlanta Judicial Circuit