

**IN THE SUPERIOR COURT OF BEN HILL COUNTY
STATE OF GEORGIA**

**FOURTH 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), the requirements for the filing of a statutory speedy trial demand imposed by O.C.G.A. §§ 17-7-170 and 17-7-171 were reinstated effective August 2, 2021. However, the time restraints 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 Ben Hill County within the Cordele Judicial Circuit for the duration of this Order.

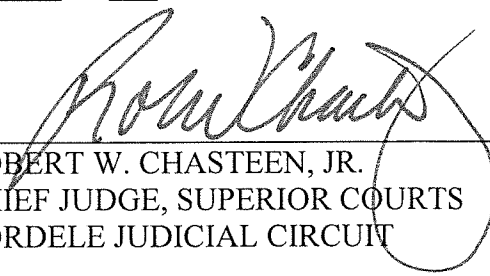
Pursuant to O.C.G.A. § 38-3-62 (b) (9), an order granting relief from statutory speedy trial requirements following a judicial emergency shall not exceed a total of eight months and shall end on the last day of a term of court, and pursuant to O.C.G.A. § 38-3-62 (b) (13), no such order shall issue after 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. The June 2021 term of court was interrupted by the Statewide Judicial Emergency, and an Order was entered on July 1, 2021 that granted relief from statutory speedy trial demands pursuant to O.C.G.A. §38-3-62 (b) in Ben Hill Superior Court. The Order became effective on September 20, 2021 and terminated on April 3, 2022, a date that was: (1) not more than eight months from the date it was entered; and (2) the last day of the January term of the Superior Court of Ben Hill County. The Second Order Granting Relief from Statutory Speedy Trial Requirements became effective on April 8, 2022 and terminated on September 18, 2022, a date that was: (1) not more than eight months from the date it is entered; and (2) the last day of the June term of the Ben Hill Superior Court. The Third Order Granting Relief from Statutory Speedy Trial Requirements became

effective on September 19, 2022 and terminated on April 2, 2023, a date that was: (1) not more than eight months from the date it is entered; and (2) the last day of the January 2023 term of the Ben Hill Superior Court. The Fourth Order Granting Relief from Statutory Speedy Trial Requirements will become effective on April 24, 2023 and expire on June 30, 2023, a date that is (1) not more than eight months from the date the order is entered and (2) the date of expiration of relief from statutory speedy trial requirements pursuant to O.C.G.A. § 38-3-62 (b), 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 Ben Hill 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: this Notice shall be provided to the Office of the District Attorney and Office of the Public Defender via email or regular mail. Notice shall be posted on the doors to the courthouses and in the lobbies of the Offices of the Clerks of Superior Court.

Notice shall be posted on the Eighth Judicial Administrative District website. Notice shall be posted outside the doors to the courtrooms.

SO ORDERED this 24th day of April, 2023.



ROBERT W. CHASTEEN, JR.
CHIEF JUDGE, SUPERIOR COURTS
CORDELE JUDICIAL CIRCUIT

EXHIBIT A - CERTIFICATION

Pursuant to O.C.G.A. § 38-3-62 (b) (3), a majority of the active Superior Court Judges of the Cordele Judicial Circuit 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 Honorable Harold D. Melton, Chief Justice of the Supreme Court of Georgia, 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. §§ 17-10-170 and 17-10-171 is impracticable in the Superior Court of Ben Hill County within the Cordele 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 Ben Hill 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 Ben Hill County currently totals 508; the pending criminal cases volume that existed in (2019) totaled 198; the pending criminal case volume that existed in (2018) totaled: 174; and the pending criminal case volume that existed in (2017) totaled 182.

(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 Ben Hill County is substantially below, or should be 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 Ben Hill County for the current year (2023) is 10%; the annualized criminal case clearance rate that existed in (2019) was: 59.5 percent; the annualized criminal case clearance rate that existed in (2018) was: 72 percent; and the annualized criminal case clearance rate that existed in (2017) was: 105 percent.

(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 Ben Hill County totals one.

(5)

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

(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 Ben Hill County that limit the use of facilities available to conduct criminal trials and related activities:

The Ben Hill County Courthouse contains only one courtroom that is large enough to accommodate a criminal jury trial. If a lengthy criminal trial takes an entire week, merely one criminal case is disposed of during that term of court, and all other pending cases remain for the next term. If social distancing mandates are required, the courtroom in the Ben Hill County Courthouse is not large enough to accommodate the jury selection portion of a trial. Ben Hill County does not own an alternative site that would provide any more room than the courthouse; we have searched extensively and looked at numerous buildings, but none provides the space and adequate necessities such as restrooms and parking. Jury selection could take place off-site in a courthouse annex to allow jurors to be spaced apart according to public health guidelines; however, the alternate site would not be a county owned building as required by O.C.G.A. § 15-6-18.

(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 Ben Hill County, as follows:

The Cordele Judicial Circuit is comprised of four counties. Prior to the pandemic, we had a minimum of two jury trial weeks per month circuit-wide, and there were times when we had five consecutive jury trial weeks when our trial terms ran back to back. Because we have to fit 34 trial weeks into our yearly calendars, it is extremely difficult for us to add or specially set additional trial weeks. Our circuit district attorney and public defender's offices lack the staff to add additional trial weeks to our loaded jury trial schedules. Further, we have difficulty procuring the

attendance of law enforcement officers, forensic analysts, and crime lab experts, as they are pulled away from their employment duties when their attendance is required for trials, and they are required to testify in hearings and trials across the state.

Because Ben Hill County is part of a four county circuit, adding jury trial weeks in one county impacts criminal hearings scheduled in the other counties. Our prosecutors, public defenders, and expert witnesses are unable to appear for arraignments, calendar call hearings, bond hearings, probation revocation hearings, and other criminal motions hearings when their attendance is required for jury trials. Currently, we have unfilled positions in our district attorney's office. Our sheriff's offices, Superior Court judges' office, probation offices, and public defender's office have unfilled positions and are understaffed. Further, we have to cancel some of our criminal hearing days when we add jury trial days, as a judge is unable to preside over trials and hearings simultaneously.

Ben Hill County has very limited resources. Ben Hill County does not have a crime lab, and we compete for access to drug testing and the availability of crime lab experts to testify as witnesses in hearings and trials. Medical examiners are also particularly difficult to pin down, as they are required to testify in hearings and trials across the state.

(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 Ben Hill County are as follows:

Our circuit never ceased providing access to the courts for criminal defendants during the COVID-19 pandemic. We began using the Starleaf and Zoom programs to provide video hearings in early April of 2020. We consistently used the Starleaf, Zoom, and WebEx programs to hold bond hearings, bond reconsideration hearings, motions for new trial, motions to withdraw guilty pleas, petitions for writ of habeas corpus, and countless other motions. We met with our sheriffs, emergency management, and public health officials in each of our four counties to create Covid-19 operating guidelines for our courthouses so that we could have in person hearings while complying with all public health mandates for screening, social distancing, sanitizing, etc. We staggered the times for our hearings so that we could address several hearings while having as few people in the courtrooms at one time as possible. We installed equipment that would allow our hearings to be live-streamed. We also purchased equipment that would allow witnesses and other court participants to appear for trials and hearings remotely. All of these measures were

implemented to provide access to the courts for criminal defendants, and we were able to significantly reduce the number of people in custody and awaiting trial.

In an effort to reduce the number of criminal defendants held in custody awaiting trial, we schedule initial bond hearings as soon as possible. Motions for reconsideration of bond are filed and heard routinely. Our judges review county jail lists each week to identify defendants who would be eligible for early release or special consideration. Judges review jail lists to determine which defendants may need an additional bond hearing, bond reduction hearing, or other court appearance to enable the defendant to be released from jail while he or she awaits trial.

We closely followed Justice Melton's Guidance for Resuming Jury Trials in creating procedures for the resumption of jury trials and resumed holding jury trials as soon as the statewide moratorium on trials was lifted. Because there was insufficient space for jury selection in the Ben Hill County Courthouse with social distancing mandates in place, we used an alternate site for jury selection during our 2021 jury trial terms. A concerted effort was made by the Superior Court Judges, Ben Hill County Sheriff's Office, Clerk of Superior Court, and the Ben Hill County Board of Commissioners and County Manager to set up our courthouse annex and safely conduct jury selection.

(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 Ben Hill County, if any, are as follows:

Presently, O.C.G.A. § 15-6-3 (13) provides for four terms of court in Ben Hill County per year. This means there are only six weeks for criminal trials. At present, there are 508 criminal cases pending in Ben Hill Superior Court. If we had to add additional jury trial weeks to try our 508 outstanding cases, this would result in reducing the number of criminal bond and other types of hearings in both Ben Hill County and our other three counties. It would also impose a burden on the Ben Hill County Sheriff's Office, the District Attorney's Office and the Public Defender's office, which are all presently understaffed due to unfilled positions.

(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 Ben Hill 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 Ben Hill County during the time this Order remains in effect: The Court added two additional Ben Hill County criminal trial weeks in 2023. This will provide two additional weeks of criminal trials for a total of eight criminal trial weeks for the calendar year. Priority may be given in a case where the alleged victims are particularly aggrieved, such as child victims or those who have suffered a large economic loss.


(11)

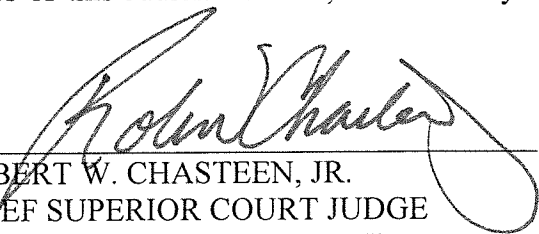
Pursuant to O.C.G.A. § 38-3-62 (b) (4) (B), in the Superior Court of Ben Hill County, Judge Robert W. Chasteen, Jr. has been scheduled for one trial week during the period of this Order; Judge T. Christopher Hughes has been scheduled for zero trial weeks during the period of this Order; and Judge Denise D. Fachini has been scheduled for one trial week during the period of this Order.


This Order has been entered:

- 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).

So certified by a majority of the active judges of this Judicial Circuit, this ^{24th} ~~19th~~ day of ~~September 2022.~~ ^{April, 2023.} *CB*


T. CHRISTOPHER HUGHES
SUPERIOR COURT JUDGE
CORDELE JUDICIAL CIRCUIT


ROBERT W. CHASTEEN, JR.
CHIEF SUPERIOR COURT JUDGE
CORDELE JUDICIAL CIRCUIT


DENISE D. FACHINI
SUPERIOR COURT JUDGE
CORDELE JUDICIAL CIRCUIT