



SUPREME COURT OF GEORGIA

June 7, 2021

NOTICE OF EXPECTED TERMINATION OF STATEWIDE JUDICIAL EMERGENCY ON JUNE 30, 2021

On March 14, 2020, 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, which was based upon the Governor's declaration in Executive Order No. 03.14.20.01, pursuant to OCGA § 38-3-51, that a Public Health State of Emergency existed in the State of Georgia due to the spread of COVID-19. The Governor has repeatedly renewed the Public Health State of Emergency, but it is now doubtful that the Governor will continue the public health emergency declaration beyond June 30, 2021. The Chief Justice's Order has been extended 15 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, May 8, and today, June 7, 2021. See OCGA § 38-3-61 (b) (authorizing the Chief Justice to extend an order declaring the existence of a judicial emergency beyond the 90-day maximum period for other judicial emergency orders "for so long as such [public health emergency as set forth in OCGA § 38-3-51] exists, as declared by the Governor").

Because it is anticipated that the Public Health State of Emergency declared by the Governor may expire at the end of June 30, 2021, the Order Declaring Statewide Judicial Emergency is being further extended today 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.

Pursuant to Section VIII (A) of today's extension order, courts, lawyers, litigants, and the public are hereby given notice of the expected termination of the statewide judicial emergency order.

I. The Termination of the Chief Justice's Statewide Judicial Emergency Order Will Reimpose All Deadlines Still Suspended and Tolloed by the Order.

The Chief Justice's 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. As discussed further in today's extension order, most of those deadlines were reimposed on *litigants* as of July 14, 2020, and the deadlines in OCGA §§ 17-7-50 and 17-7-50.1 for indicting detained individuals were reimposed as of May 14, 2021. However, recognizing the substantial backlog of pending cases, other deadlines imposed on *courts* have remained suspended and tolled, and due to the lengthy prohibition on almost all grand jury proceedings and jury trials, other deadlines for grand jury proceedings and deadlines calculated by reference to the date of a civil or criminal jury trial or a grand jury proceeding have also remained suspended and tolled.

When the Chief Justice's Statewide Judicial Emergency Order expires, *all* deadlines that have remained suspended and tolled based on that order will be *immediately* reimposed. This will include deadlines imposed by statutes and rules for courts to hold hearings, conduct other proceedings, decide motions, and issue other orders, as well as statutory speedy trial and other requirements tied to grand jury proceedings and jury trials. As discussed further below, **certain deadlines may still be suspended or tolled based on a local judicial emergency order issued under OCGA §§ 38-3-61 and 38-3-62 (a) or an order granting relief from statutory speedy trial requirements issued under OCGA § 38-3-62 (b), but only if such orders are validly issued. To avoid serious**

complications in calculating deadlines, such orders should be issued in time to avoid any gap after the expiration of the Chief Justice’s Order.

A judge issuing any sort of order addressing the consequences of the COVID-19 pandemic should consider the authority by which the order is issued and must comply with any constitutional, statutory, uniform rule, or other requirements for such an order.

Note that **emergency amendments to court and bar rules** on such matters as videoconferencing and CLE requirements are based on the Supreme Court’s constitutional rule-making authority rather than on statutory judicial emergency authority. Those amendments will remain in effect after the termination of the Chief Justice’s Statewide Judicial Emergency Order for the period specified in each amendment, as the Court considers whether to make each amendment permanent, modify it, or allow it to expire.

II. Local Judicial Emergency Orders Under OCGA §§ 38-3-61 and 38-3-62 (a).

During the COVID-19 pandemic, many courts in Georgia have issued orders with the term “judicial emergency” in the caption or body of the order. However, **OCGA §§ 38-3-60 to 38-3-64 provide the only *statutory* authority to issue orders declaring the existence of a judicial emergency and the only authority for *two particular types of emergency actions*. First, a statutorily authorized judicial emergency order may grant relief from otherwise applicable legal deadlines. See OCGA § 38-3-62 (a) (“An authorized judicial official in an order declaring a judicial emergency, or in an order modifying or extending a judicial emergency order, is authorized to suspend, toll, extend, or otherwise grant relief from deadlines or other time schedules or filing requirements imposed by otherwise applicable statutes, rules, regulations, or court orders, whether in civil or criminal cases or administrative matters . . .”). **Second, a statutorily authorized judicial emergency order may designate****

an alternate court facility. See OCGA § 38-3-61 (c) (“In the event the circumstances underlying the judicial emergency make access to the office of a clerk of court or a courthouse impossible or impractical, the order declaring the judicial emergency shall designate another facility, which is reasonably accessible and appropriate, for the conduct of court business.”).

In addition to various technical requirements regarding the content of and notifications regarding judicial emergency orders found in OCGA §§ 38-3-61 (a) and 38-3-63, **there are several important limitations on this statutory authority. First, only the Chief Justice of the Georgia Supreme Court or a chief judge of a Georgia superior court judicial circuit is authorized to declare a judicial emergency.** See OCGA §§ 38-3-60 (1) (defining “authorized judicial official”); 38-3-61 (a) (stating that “[a]n authorized judicial official is authorized to declare the existence of a judicial emergency . . .”). A “judicial emergency” order issued by any other judge is not a valid order under these statutes.

Second, the order must be based on a determination that a “judicial emergency” exists in the pertinent jurisdiction. OCGA § 38-3-60 (2) defines “judicial emergency” as

- (A) A state of emergency declared by the Governor under Part 1 of this article;
- (B) A public health emergency under Code Section 31-12-1.1;
- (C) A local emergency under Code Section 36-69-2; or
- (D) Such other serious emergency when, as determined by an authorized judicial official, the emergency substantially endangers or infringes upon the normal functioning of the judicial system, the ability of persons to avail themselves of the judicial system, or the ability of litigants or others to have access to the courts or to meet schedules or time deadlines imposed by court order or rule, statute, or administrative rule or regulation.

Thus, judicial emergencies are not limited to an ongoing public health state of emergency declared by the Governor or the Department of Public Health. A judicial emergency may also be declared due to serious problems – like the ongoing consequences of the pandemic, which required major restrictions on in-person judicial proceedings and otherwise created backlogs of cases – that substantially infringe upon the normal functioning of the judicial system, the ability of people to avail themselves of the judicial system, or the ability of litigants to have access to the courts or meet the normal legal deadlines.

However, except for judicial emergency orders issued by the Chief Justice based upon the existence of a public health emergency declared by the Governor under OCGA § 38-3-51 (like the Statewide Judicial Emergency Order that was extended most recently today), **judicial emergency orders are limited in duration to no more than 90 days in 30-day increments** – “an initial duration of not more than 30 days; provided, however, that the order may be modified or extended for no more than two periods not exceeding 30 days each[.]” OCGA § 38-3-61 (b). Thus, chief judges of superior court circuits who have issued or plan to issue a local judicial emergency order under OCGA § 38-3-61 must ensure that the duration of such order or extension thereof complies with these duration limitations.

Accordingly, a chief judge of a superior court circuit who previously declared a local judicial emergency and issued an order under OCGA § 38-3-61 based upon public health issues related to the COVID-19 pandemic may be authorized to declare a *different* local judicial emergency and issue a new order under OCGA § 38-3-61 based on the “other serious emergency” provision of OCGA § 38-3-60 (2) (D) if the backlog of cases and proceedings caused by the pandemic meet the standard set forth in that statutory provision, although the new order would be limited in duration to 30 days with at most two 30-day extensions. Note that if the local judicial emergency is affecting a class of court other than or in addition to the superior court, the chief judge of the superior court judicial circuit remains the only local judge with authority to issue an order under OCGA §§ 36-3-61 and 38-3-62 to grant

relief from legal deadlines applicable to that other class of court or to designate an alternate court facility for it. Finally, note again the importance of avoiding even short gaps in the suspension and tolling of specific legal deadlines between the expiration of the Chief Justice’s Statewide Judicial Emergency Order or a previous local judicial emergency order and any new local judicial emergency order because gaps of even a day or two may greatly complicate the calculation of the deadlines applicable to many cases.

**III. Local Orders Under OCGA § 38-3-62 (b) (Senate Bill 163)
Suspending Statutory Speedy Trial Requirements
Following a Judicial Emergency.**

Senate Bill 163, which was passed by the General Assembly during the 2021 legislative session, amended OCGA § 38-3-62 to add a subsection (b), which authorizes the chief judge of a Georgia superior court judicial circuit or the chief judge of a Georgia state court to suspend, toll, extend, modify, or otherwise grant relief from the statutory speedy trial requirements imposed by OCGA §§ 17-7-170 and 17-7-171, in that judge’s court in a particular county and for a limited duration, *following* a judicial emergency if compliance with such requirements is impracticable under the totality of the circumstances arising from the preceding judicial emergency. This new provision will provide superior and state courts that have large backlogs of criminal cases which may need jury trials to resolve and that have not been able to hold jury trials due to public health restrictions more time to address those backlogs after a judicial emergency ends.

Detailed guidance and model forms for the order and supporting certification required by OCGA § 38-3-62 (b) have been provided to superior and state court judges by their court councils. It is important to understand that orders issued under this provision are *not* themselves “judicial emergency” orders but rather must *follow* a valid statutory judicial emergency order issued under OCGA § 38-3-61; may grant relief *only* for a limited period and *only* from statutory speedy trial requirements (not from other legal deadlines); must be issued for

a superior or state court in a *particular county* based on that court and county's particular circumstances, as shown by a detailed certification; and must include a *plan* to resolve cases in which a statutory speedy trial demand has been filed as expeditiously as possible.

Because an order under OCGA § 38-3-62 (b) must be based on “the totality of the circumstances arising from the preceding judicial emergency,” *id.* § 38-3-62 (b) (2) (B), **it may be preferable to issue such orders immediately following and based upon the Statewide Judicial Emergency Order, which affected the judicial system for more than 15 months, rather than following and based upon a local judicial emergency order that may be issued or may extend after the Statewide Judicial Emergency Order expires and that can be in effect for a maximum of 90 days.** Note also that Senate Bill 163's amendment enacting OCGA § 38-3-62 (b) takes effect on July 1, 2021, which is immediately after the statewide judicial emergency order is expected to terminate. Avoiding any gap in time between orders granting relief from statutory speedy trial requirements will avoid major calculation complications, but an order under OCGA § 38-3-62 (b), while it may be entered before July 1, 2021, will have no legal effect until the new statutory provision becomes effective on the first minute of that day.

IV. Local Orders Regarding Court Operations and Management.

During the COVID-19 pandemic, many orders that have been captioned or include the term “judicial emergency” are not statutorily authorized judicial emergency orders, which, to repeat, may be issued only by the Chief Justice or a chief judge of a superior court judicial circuit, may grant relief from legal deadlines or designate alternate court facilities, and are subject to other statutory requirements and limitations. These local orders instead address matters of court operations and management, including access to courthouses and courtrooms, designation of proceedings that will be conducted remotely and details on how such proceedings will be conducted, public health

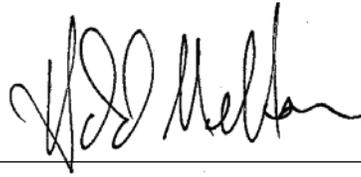
precautions for in-person proceedings, such as wearing masks and social distancing, scheduling issues not requiring relief from legal requirements, etc. Many of these local orders have followed the guidance provided in the Chief Justice's Statewide Judicial Emergency Order, as extended and modified, and in the various guidance documents in the Appendix to the Order.

The termination of the Statewide Judicial Emergency Order will not necessarily affect these local orders. To the extent the judge or judges issuing such orders have authority to issue orders regarding court operations and management, the orders will continue in effect and similar orders may be issued. Even after the Chief Justice's Order expires, some of its provisions may provide useful guidance for local orders. For example, courts may decide to retain published operating guidelines for in-court proceedings so that persons coming to court can understand the precautions being taken to protect their health, although those guidelines may need to be revised to reflect changing public health guidance. Courts may also decide to retain their local committees of judicial system participants to consult with regarding modifications of operating guidelines due to changing public health guidance as well as ways to restore the local court system to full operations and resolve the backlog of cases. And all Georgia courts should continue to emphasize professionalism among lawyers and judges as we emerge from the pandemic but continue to deal with its many effects.

V. Distribution of This Notice.

This notice shall immediately be sent to the judges and clerks of all courts in this State, including the clerk of the Court of Appeals of Georgia, such service to be accomplished through means to assure expeditious receipt, which include electronic means. Notice shall also be sent to the news media, the State Bar of Georgia, and the officials and entities listed below.

IT IS SO ORDERED this 7th day of June, 2021.

A handwritten signature in black ink, appearing to read "H. D. Melton", written in a cursive style. The signature is positioned above a horizontal line.

Chief Justice Harold D. Melton
Supreme Court of Georgia

Governor Brian P. Kemp
Lt. Governor Geoff Duncan
Speaker David Ralston
State Bar of Georgia
Administrative Office of the Courts
Judicial Council of Georgia
Council of Superior Court Clerks of Georgia
Department of Juvenile Justice
Criminal Justice Coordinating Council
Council of Accountability Court Judges
Georgia Commission on Dispute Resolution
Institute of Continuing Judicial Education of Georgia
Georgia Council of Court Administrators
Chief Justice's Commission on Professionalism
Judicial Qualifications Commission
Association County Commissioners of Georgia
Georgia Municipal Association
Georgia Sheriffs' Association
Georgia Association of Chiefs of Police
Georgia Public Defender Council
Prosecuting Attorneys' Council of Georgia
Department of Corrections
Department of Community Supervision
Georgia Court Reporters Association
Board of Court Reporting
State Board of Pardons and Paroles
Constitutional Officers Association of Georgia
Council of Magistrate Court Clerks
Council of Municipal Court Clerks

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

I certify that the above is a true extract from
the minutes of the Supreme Court of Georgia.
Witness my signature and the seal of said court
hereto affixed the day and year last above written.

 , Clerk