



IN THE SUPERIOR COURT OF COBB COUNTY  
STATE OF GEORGIA

CAFN: 21-1-0005

**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 certification attached hereto and incorporated herein as “Exhibit A – Certification,” the requirements for the filing of a statutory speedy trial demand imposed by O.C.G.A. §§ 17-7-170 and 17-7-171 are hereby reinstated effective July 12, 2021. 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 Cobb County within the Cobb Judicial Circuit effective July 12, 2021 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.

Accordingly, the May 2021 term of court having been interrupted by the Statewide Judicial Emergency, this Order shall become effective at the beginning of the July term on July 12, 2021, and it shall terminate on March 12, 2022, a date that is: (1) not more than eight months from its effective date; and (2) the last day of a term of the Superior Court of Cobb 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 Cobb 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: published in the Cobb County legal organ, posted on all entrances to the Courthouse, emailed to the Cobb County Bar Association for email distribution to its members, personally served on the Cobb County District Attorney, personally served on Cobb County Circuit Defender, personally served on the Cobb County Superior Court Clerk, personally served on the Cobb County Sheriff, posted on the Cobb County Superior Court website, posted in the Cobb County Law Library, and published to the Cobb County Superior Court's Twitter feed.

SO ORDERED this 30 day of June, 2021.

  
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Robert D. Leonard II, Chief Judge  
Cobb Judicial Circuit

## EXHIBIT A - CERTIFICATION

Pursuant to O.C.G.A. § 38-3-62 (b) (3), the Chief Judge and a majority of the active Superior Court Judges of the Cobb 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 and following the statewide judicial emergency declared on the 13th day of March, 2020 and ending on the 30<sup>th</sup> 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 Cobb County within the Cobb 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 Cobb County is on pace to be 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 cases filed in the Superior Court of Cobb County currently totals: 3,965 from January 1, 2021 through June 29, 2021; the criminal cases filed in 2020 totaled: 5,275; the criminal cases filed in 2019 totaled: 9,043; the criminal case filings that existed in 2018 totaled: 8,853; and the criminal case filings that existed in 2017 totaled 8,075.<sup>1</sup> However, the cases that remain unresolved through the pandemic are the cases that are more difficult to resolve, require more judge time, and courthouse space/resources.

### (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 Cobb 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 Cobb County in the current calendar year is: 85 percent<sup>2</sup>; the annualized criminal case clearance rate that existed in 2020 was: 144 percent<sup>3</sup>; the annualized criminal case clearance rate that existed in 2019 was: 140 percent; the annualized criminal case clearance rate that existed in 2018 was: 155 percent; and the annualized criminal case clearance rate that existed in 2017 was: 135 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 Cobb County totals: 6.<sup>4</sup>

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<sup>1</sup> As of June 29, 2021.

<sup>2</sup> As of June 29, 2021.

<sup>3</sup> It is believed this number is artificially high given the few indictments and completing cases that were easy to resolve, leaving the more complex ones to try now.

<sup>4</sup> As of June 29, 2021. The act has been tolled since March of 2020 and the absence of the deadline to file may be suppressing this number.

(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 (March Term) was 3; the number of jury trials held during the present term of court (May Term) in the Superior Court of Cobb County is 8 as of the date of this Order.<sup>5</sup>

(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 Cobb County preventing the use of facilities available to conduct criminal trials and related activities: the Superior Court of Cobb County can only conduct two simultaneous trials per week for the duration of the 2021 calendar year. This is the only solution to ensure CDC recommended spacing of litigants, jurors, the public, and court staff. This includes considerations for safe distancing of prospective juror assembly, juror deliberations, courtroom seating for multiple defendants, and public access to view court proceedings. There is only one courtroom in Superior Court that has capacity to contain all of the necessary parties for a jury trial. Additionally, for trial conducted in regular courtrooms, those must occupy two courtrooms to be able to comply with social distancing guidelines. There are two rooms that are big enough to accommodate 12 jurors deliberating. Multiple defendant cases and interpreter cases also present additional space and logistical challenges.

(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 Cobb County, as follows: The Cobb County District Attorney and Circuit Defender have limited resources to provide attorneys for multiple cases back-to-back, particularly on the SVU cases where each SVU prosecutor is shared by two judges.

(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 Cobb County are as follows: the Superior Court has formulated a plan to conduct jury trials in a COVID-compliant manner and has been executing that plan since April 19, 2021. The plan is limited by space constraints discussed below.

(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 Cobb County, if any, are as follows: Additional unfinished courthouse space (including courtrooms) is potentially available, however, Cobb County needs additional funds, materials, and staff to complete the work. Cobb County Superior Court has requested additional funding from federal relief bills, but funding has yet to be allocated to the buildout of the 12th courtroom. When funds are released, completing additional space will take eight to twelve months. The

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<sup>5</sup> However, two of these trials were mistrials and may need to be re-tried.

only courtroom large enough to accommodate a jury trial in a single courtroom is the ceremonial courtroom. To accommodate jury trials in other courtrooms, it takes two courtrooms per trial, which severely limits the ability to keep other business moving. There is an additional judge joining the bench in January and considerations need to be made for those additional weeks. Despite best efforts, there is no feasible way to accommodate the constitutional right of public access for more than two trials at a time in the Superior courthouse without the finishing of the last remaining space to gain an extra courtroom. Holding offsite trials in criminal cases presents a huge burden on the sheriff to secure the space without holding cells, which represents a major security risk.

**(10)**

Pursuant to O.C.G.A. § 38-3-62 (b) (4) (B), the plan to resolve cases in which a statutory speedy trial demand has been filed as expeditiously as possible in the Superior Court of Cobb 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. The highest priority shall be given to any such case in which: (1) the defendant is in custody while awaiting trial; (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, not something else, and (3) the most serious charges. 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 Cobb County,

Chief Judge Leonard has been scheduled for 4 trial weeks during the period of this Order;  
Judge Staley Clark has been scheduled for 4 trial weeks during the period of this Order;  
Judge Flournoy has been scheduled for 3 trial weeks during the period of this Order;  
Judge Kell has been scheduled for 3 trial weeks during the period of this Order;  
Judge Poole has been scheduled for 4 trial weeks during the period of this Order;  
Judge Harris has been scheduled for 4 trial weeks during the period of this Order;  
Judge Childs has been scheduled for 4 trial weeks during the period of this Order;  
Judge Hill has been scheduled for 3 trial weeks during the period of this Order;  
Judge Brown has been scheduled for 3 trial weeks during the period of this Order;  
Judge Marbutt has been scheduled for 4 trial weeks during the period of this Order.<sup>6</sup>

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<sup>6</sup> As of June 22, 2021, trial weeks have been scheduled through the week of December 27, 2021. This Order may run through February 2022, so each judge will likely have 2 more additional trial weeks at the beginning of 2022.

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).

**EXHIBIT B**

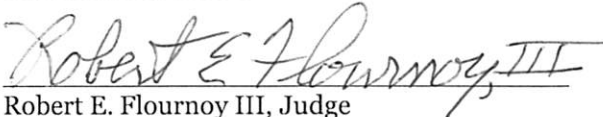
So certified by a majority of the active judges of this Judicial Circuit, this 30 day of June, 2021.



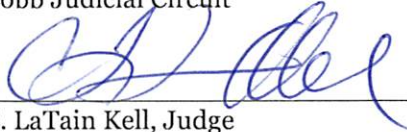
Robert D. Leonard II, Chief Judge  
Cobb Judicial Circuit



Mary Staley Clark, Judge  
Cobb Judicial Circuit



Robert E. Flournoy III, Judge  
Cobb Judicial Circuit



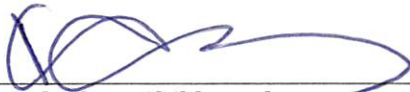
C. LaTain Kell, Judge  
Cobb Judicial Circuit



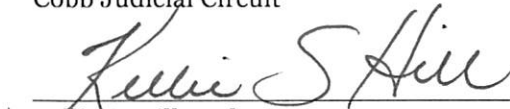
A. Gregory Poole, Judge  
Cobb Judicial Circuit



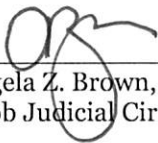
Ann B. Harris, Judge  
Cobb Judicial Circuit



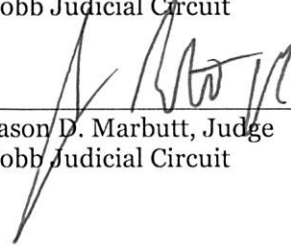
Kimberly A. Childs, Judge  
Cobb Judicial Circuit



Kellie S. Hill, Judge  
Cobb Judicial Circuit



Angela Z. Brown, Judge  
Cobb Judicial Circuit



Jason D. Marbutt, Judge  
Cobb Judicial Circuit