

Judicial Council of Georgia
Emergency Session

By Remote Conferencing

Livestream at <https://www.youtube.com/judicialcouncilofgeorgia>

Monday, October 26, 2020
2:00 p.m.

- 1. Preliminary Remarks**
(Chief Justice Harold D. Melton, Est. Time – 2 Min.)
- 2. Roll Call of Judicial Council Members**
(Cynthia Clanton, Judicial Council Secretary and AOC Director, Est. Time – 2 Min.)
- 3. Adoption of Minutes from Emergency Session on October 5, 2020**
(Chief Justice Harold D. Melton, Est. Time – 2 Min.)
- 4. Discussion of Statewide Judicial Emergency Orders and COVID-19 Update by Judicial Council Members**
(Chief Justice Harold D. Melton, Est. Time – 15 Min.)
 - A. Judicial COVID-19 Task Force Update**
(Judge Shawn LaGrua, Est. Time – 5 Min.)
- 5. Reports from Courts, Councils, State Bar, and AOC (Est. Time – 20 min.)**
 - A. Supreme Court**
 - B. Court of Appeals**
 - C. Business Court**
 - D. Council of Superior Court Judges**
 - E. Council of State Court Judges**
 - F. Council of Juvenile Court Judges**
 - G. Council of Probate Court Judges**
 - H. Council of Magistrate Court Judges**
 - I. Council of Municipal Court Judges**
 - J. State Bar of Georgia**

K. Administrative Office of the Courts

6. Reports from additional Judicial Branch Agencies (Est. Time – 10 Min.)

- A. Council of Accountability Court Judges**
- B. Georgia Commission on Dispute Resolution**
- C. Council of Superior Court Clerks**
- D. Chief Justice’s Commission on Professionalism**
- E. Georgia Council of Court Administrators**
- F. Institute of Continuing Judicial Education**
- G. Judicial Qualifications Commission**

7. Old/New Business
(Chief Justice Harold D. Melton, Est. Time – 5 Min.)

8. Concluding Remarks and Adjournment
(Chief Justice Harold D. Melton, Est. Time – 5 Min.)

Next Judicial Council Meeting – General Session

Friday, December 11, 2020 10 a.m. – 12:30 p.m. Zoom Conferencing

Judicial Council Meeting Calendar – 2021

Friday, February 12, 2021	10 a.m. – 12:30 p.m.	The James H. “Sloppy” Floyd Building/ Atlanta, GA
Friday, April 23, 2021	10 a.m. – 12:30 p.m.	The Classic Center/Athens, GA
Friday, August 13, 2021	10 a.m. – 12:30 p.m.	Columbus Convention & Trade Center/Columbus, GA
Friday, December 10, 2021	10 a.m. – 12:30 p.m.	The Carter Center/Atlanta, GA

Please continue to check www.georgiacourts.gov (the Judicial Gateway) for the latest updates and information. Thank you and continue to be safe!

Judicial Council of Georgia
Emergency Session
Conference Call
October 5, 2020 • 2 p.m.

Members Present

Chief Justice Harold D. Melton, Chair
Presiding Justice David Nahmias
Chief Judge Brian Amero
Chief Judge Jeffrey S. Bagley
Judge James G. Blanchard, Jr.
Chief Judge Christopher S. Brasher
Judge Kerri Carter
Judge Walter W. Davis
Judge Lori B. Duff
Chief Judge T.J. Hudson
Chief Judge Asha Jackson
Ms. Dawn Jones
Judge Lisa C. Jones
Judge Quinn M. Kasper
Judge Jeffrey H. Kight
Chief Judge Christopher J. McFadden
Judge J. Wade Padgett
Judge C. Gregory Price
Judge Fletcher Sams
Judge W. James Sizemore, Jr.
Judge Wesley B. Taylor
Judge Ralph Van Pelt, Jr.
Chief Judge Sarah Wall
Chief Judge Willie C. Weaver, Sr.

Chief Judge Kelli L. Wolk
Judge Alvin T. Wong

Members Absent

Judge Melanie Cross
Vice Chief Judge Brian K. Rickman

Staff Present

Ms. Cynthia H. Clanton, Director
Ms. Jessica Farah
Mr. Christopher Hansard
Ms. Stephanie Hines
Ms. Cheryl Karounos
Ms. Noelle Lagueux-Alvarez
Ms. Tracy Mason
Ms. Lashawn Murphy
Mr. Sterling Perry
Ms. Tiffanie Robinson
Mr. Bruce Shaw
Ms. Maleia Wilson

(Guests Appended)

Call to Order and Welcome

The meeting of the Judicial Council of Georgia (Council) was called to order at 2:00 p.m. by Chief Justice Harold Melton. He informed the Council that the meeting will be recorded, livestreamed, and open to the press and public. Ms. Clanton called roll for Council members; staff and guests were instructed to submit their names for the purpose of the minutes.

Adoption of Minutes

Chief Justice Melton directed the Council's attention to the minutes of the Emergency Session held on September 21, 2020. A motion to approve the minutes was offered by Chief Judge Brasher with a second from Presiding Justice Nahmias. No discussion was offered, and the motion was approved without opposition.

Discussion of Statewide Judicial Emergency Orders

Chief Justice Melton highlighted the anticipated content of the upcoming Seventh Order Extending Declaration of Statewide Judicial Emergency. The draft circulated includes the language from the current order allowing the resumption of grand jury proceedings at the local courts' discretion. The suspension of jury trials will be removed, effective immediately upon execution of the order; the order will be entered on Saturday, October 10, 2020.

Chief Justice Melton recommended continuing to utilize resources that are available to move cases via remote technology. He noted a hold on statutory speedy trial remains for the foreseeable future. Regarding the work on grand juries, Chief Justice Melton asked the superior court judges to present data on the courts' progress in this area. He thanked Shannon Weathers and Emily Youngo for their work on this.

Chief Justice Melton asked the Council for any questions or feedback concerning the order. He requested that the Council share any solutions as proceedings resume to assist the Task Force. Chief Justice Melton noted progress is being made with public service announcements, with a taping scheduled for Thursday of this week. Chief Justice Melton acknowledged Presiding Justice Nahmias for anything further concerning the next Statewide Judicial Emergency Order; Presiding Justice Nahmias clarified the order would be signed on October 10, 2020.

Reports from Courts, Councils, State Bar, and AOC

Supreme Court. No report was provided.

Court of Appeals. No report was provided.

Business Court. No report was provided.

Council of Superior Court Judges. Chief Judge Amero acknowledged Mr. Weathers to provide an update with data requested by the Chief Justice, as to the status and timing of the resumption of grand juries by the chief judges. Mr. Weathers shared that most circuits plan to resume grand jury proceedings in mid-October through November. He mentioned some circuits will start in 2021, due to certain factors. He shared that several judges expressed their gratitude to the Chief Justice for his direction and leadership. Mr. Weathers thanked the District Court Administrators, the Chief Judges, and Ms. Youngo for their assistance with this report and shared they will continue to update the Council as additional data is provided. Chief Justice Melton expressed his appreciation.

COVID-19 Task Force Update

Chief Judge Russ McClelland reported the Task Force is available to continue to meet to address any issues. The PSA committee is doing well, and he referred the Council to Chief Judge Leonard for any updates concerning the Technology Committee. The Civil and Criminal committees are meeting, and the Civil committee is working on guidance that judges and lawyers can use to resolve discovery disputes before filing motions to compel. Chief Judge McClelland asked the Council for any feedback.

Chief Judge Amero asked for any update on remote grand jury guidance; Chief Justice Melton reported it's currently in discussion by the Supreme Court.

Chief Judge Jackson asked if the Court had considered how long the hold on statutory speedy trials will last. Chief Justice Melton stated he expects it will be a substantial period and it could be the last thing to be included in orders going forward. There are ongoing discussions regarding possible legislation and caseload data needs to be considered.

Chief Judge McClelland mentioned Judge LaGrua requested that any statutory changes regarding pandemic-specific matters be addressed to the Task Force.

Council of State Court Judges. Judge Wes Tailor reported that the Council of State Court Judges will hold its Fall Conference virtually next week. He mentioned the Ad Hoc Misdemeanor Mental Health Competency Evaluation Committee has met with representatives of DBHDD.

Council of Juvenile Court Judges. No report was provided.

Council of Probate Court Judges. Chief Judge Wolk reported Judge Batten in Brantley County, and her spouse, are currently suffering from COVID-19. She solicited the Council for prayers for their families and the County's office.

Council of Magistrate Court Judges. No report was provided.

Council of Municipal Court Judges. Chief Judge Weaver reported the Council completed its Strategic Planning meeting and will distribute the report to its Executive Committee for approval.

State Bar of Georgia. Ms. Jones reported that the State Bar continues to operate remotely. She referred the Council to the State Bar's website for resources on CLE livestreaming. The Seeking Equal Justice and Addressing Racism & Racial Bias Committee held its first Courageous Conversation meeting between members of the Bar and the *Daily Report* representatives on September 30. The first official Board of Governors meeting of the year is coming up and will be

held virtually. Ms. Jones thanked those who participated in the survey regarding Board of Governors meetings, as the information will be very helpful with planning a hybrid meeting. The meeting in January will be at Georgia State Law School and is planned to be a hybrid, and more information is forthcoming.

Reports from additional Judicial Branch Agencies

Council of Accountability Court Judges. Chief Judge Kathlene Gosselin recognized Ms. Taylor Jones to report on behalf of the Council of Accountability Court Judges. Ms. Jones mentioned the Council has a new website as of October 1, and she asked members to visit www.cacj.georgia.gov to acquire accountability court news and updates.

Administrative Office of the Courts. Director Clanton reported today's meeting marks the 21st Judicial Council Emergency session and thanked the Council for their commitment. She stated the AOC remains fully functional and encouraged the Council to contact the AOC for any assistance.

Georgia Commission on Dispute Resolution. No report was provided.

Council of Superior Court Clerks. No report was provided.

Chief Justice's Commission on Professionalism. Ms. Karlise Grier reported the Commission is fully functional. The next CLE will be on October 23, 2020, in concurrence with the State Bar's fall meeting. She mentioned that CLE will be available once the State Bar opens its registration. Ms. Grier noted that Justice Michael Boggs and Mr. Chuck Boring will be the presenters, and Commission member Ms. Adwoa Ghartey-Tagoe Seymour will serve as moderator. Ms. Grier welcomed new Commission member Judge Shondeana Crews Morris of the Stone Mountain Judicial Circuit as the designee for the Council of Superior Court Judges.

The Commission's grant application is currently open and available on the website www.cjcpga.org and will close on October 19, 2020. At the November meeting, the Commission will consider recommendations by the Grants Committee. Ms. Grier recognized Judge Susan Edlein, Chair of the Commission Grants Committee, for her dedication and work. The Commission's next meeting will be October 9, 2020.

Georgia Council of Court Administrators. Ms. Hines reported the GCCA will hold its virtual education program and annual business meeting on October 6, 2020. The theme is "COVID-19: Navigating the Pandemic." She emphasized the forum is free to attend; however, registration is required and encouraged the Council and staff to attend.

Institute of Continuing Judicial Education. No report was provided.

Judicial Qualifications Commission. No report was provided.

Old Business

No old business was offered.

New Business

No new business was offered.

Concluding Remarks

Chief Justice Melton announced that the next Emergency Session will be Monday, October 19, 2020 and the next General Session is scheduled for December 11, 2020 via Zoom teleconference.

Adjournment

Hearing no further business, Chief Justice Melton adjourned the meeting at 2:24 p.m.

Respectfully submitted:

Tiffanie Robinson
Executive Assistant, Judicial Council/AOC
For Cynthia H. Clanton, Director and Secretary

The above and foregoing minutes
were approved on the ____ day of
_____, 2020.

Harold D. Melton
Chief Justice

**Judicial Council of Georgia
Emergency Session
Conference Call
October 5, 2020 • 2 p.m.**

Guest Present

Chief Judge Berryl A. Anderson, Magistrate Court of DeKalb County
Mr. Doug Ashworth, Institute of Continuing Judicial Education
Mr. Joseph Baden, Third Judicial Administrative District
Mr. Josh Becker, Council of Accountability Court Judges
Mr. Tracy J. BeMent, Tenth Judicial Administrative District
Judge Violet R. Bennett, State Court of Wayne County
Mr. Charles “Chuck” Boring, Judicial Qualifications Commission
Mr. Bob Bray, Council of State Court Judges
Chief Judge Geronda V. Carter, Clayton County Judicial Circuit
Mr. Richard Denney, First Judicial Administrative District
Ms. Elizabeth Fite, State Bar of Georgia
Judge Kathlene Gosselin, Northeastern Judicial Circuit
Ms. Karlise Grier, Chief Justice's Commission on Professionalism
Ms. Stephanie Hines, Georgia Court of Court Administrators
Mr. Kevin Holder, Council of Probate Court Judges
Mr. Michael Holiman, Council of Superior Court Clerks
Mr. Eric John, Council of Juvenile Court Judges
Ms. Tracy Johnson, Georgia Commission on Dispute Resolution
Ms. Taylor Jones, Council of Accountability Court Judges
Judge Stephen D. Kelley, Superior Court of Glynn County
Judge Robert Leonard, Superior Court of Cobb County
Chief Judge Russell T. McClelland, State Court of Forsyth County
Mr. David Mixon, Second Judicial Administrative District
Mr. Bob Nadekow, Eighth Judicial Administrative District
Mr. Jody Overcash, Seventh Judicial Administrative District
Judge Ronald B. Ramsey, State Court of DeKalb County
Ms. Sharon Reiss, Council of Magistrate Court Judges
Mr. William T. Simmons, Sixth Judicial Administrative District
Judge Arthur Lee Smith, Chattahoochee Judicial Circuit
Mr. Robert W. Smith, Jr., Prosecuting Attorneys' Council of Georgia
Ms. Kristen Wallace, Council of Juvenile Court Judges
Ms. Cindy Wang, Department of Juvenile Justice
Mr. Shannon Weathers, Council of Superior Court Judges
Ms. Courtney Veal, Judicial Qualifications Commission
Ms. Emily Youngo, Council of Superior Court Judges

JUDICIAL COUNCIL DRAFT
October 20, 2020

GUIDANCE FOR REMOTE GRAND JURY PROCEEDINGS

The Chief Justice recently lifted a statewide stay of regular grand jury proceedings and authorized the chief judges of the superior courts to resume regular grand jury proceedings as of September 10, 2020.¹ The resumption of regular grand jury proceedings already is underway in several counties, and more counties are expected to resume regular grand jury proceedings soon. To the extent that grand jurors can be assembled safely and consistent with public health guidance, it is anticipated that the resumption of regular grand jury proceedings in most counties will involve the whole grand jury meeting in person at the courthouse. Public health conditions, however, vary from county to county and may change over time, and the availability of facilities suitable for grand jury proceedings likewise varies from county to county. In some counties, it may be inadvisable in light of existing public health conditions for a grand jury to meet in person, and in some counties, facilities in which a grand jury could meet in person consistent with public health guidance may not be readily or routinely available. Moreover, even in counties in which it now is feasible to resume meetings of a grand jury in person, a deterioration of public health conditions could render meetings in person inadvisable, and competing demands could reduce the availability of facilities suitable for meetings in person, especially after the resumption of jury trials.² For these reasons, it is prudent to issue guidance for remote grand jury proceedings as an alternative to proceedings in person.

As described below, remote grand jury proceedings may take a variety of forms, and this guidance is intended to afford the flexibility necessary for the resumption and continuation of regular grand jury proceedings in adverse or changing public health conditions and in

¹ See Sixth Order Extending Declaration of Statewide Judicial Emergency (Sep. 10, 2020).

² See Seventh Order Extending Declaration of Statewide Judicial Emergency (Oct. 10, 2020).

counties with limited facilities suitable for grand jury proceedings consistent with public health guidance. In each county, it is for the chief judge of the superior court, in consultation with the district attorney, to determine whether regular grand jury proceedings should be resumed and continued, and if so, whether those proceedings should be conducted in person under guidance previously issued³ or remotely under this guidance.

Form of Remote Grand Jury Proceedings

Remote grand jury proceedings may take a variety of forms, depending on public health conditions, the availability of facilities for grand jury proceedings, the availability of technology, communications infrastructure, and technological support necessary for remote grand jury proceedings, and other local circumstances. These various forms include, but are not limited to:

- Proceedings in which all of the grand jurors are physically present in the courthouse or another public building, but they are dispersed in small groups or individually to multiple locations within the building, all of which are linked by closed-circuit, intranet-based, or internet-based video-conferencing and document-sharing technology.
- Proceedings in which some grand jurors are physically present in the courthouse or another public building, and other grand jurors are physically present in one or more other public buildings, all of which are linked by closed-circuit, intranet-based, or internet-based video-conferencing and document-sharing technology.
- Proceedings in which some grand jurors are physically present in the courthouse or another public building, and other grand jurors are physically present in their places of residence or other private places, all of which are linked by

³ See Guidance for Resuming In-Person Grand Jury Proceedings (Sep. 10, 2020).

internet-based video-conferencing and document-sharing technology.

- Proceedings in which all of the grand jurors are physically present in their places of residence or other private places and participate remotely with internet-based video-conferencing and document-sharing technology.

This wide range of forms offers significant flexibility for the resumption and continuation of regular grand jury proceedings in a variety of public health conditions and other local circumstances. Each form has its own advantages and disadvantages, and the form of remote grand jury proceedings that is best for one county may not be suitable for another.

Preliminary Considerations

In assessing whether remote grand jury proceedings are feasible and advisable, and if so, which form of remote grand jury proceedings is most suitable, a chief judge should consider:

1. *Current public health conditions* in the county and the extent to which, in light of those conditions, grand jurors safely may be assembled in person at the courthouse or another public building suitable for in-person grand jury proceedings. To the extent that public health conditions are conducive to an assembly in person of most grand jurors, consideration also should be given to grand jurors who may be especially vulnerable to COVID-19 by virtue of age or medical condition, including whether the participation of those grand jurors may be enhanced by some form of remote grand jury proceedings. Moreover, to the extent that public health conditions do not absolutely preclude an assembly in person of the grand jury but there nonetheless is substantial community spread of COVID-19, consideration should be given to the possibility that, if the grand jury meets in person, the infection or exposure of one or more grand jurors could require some or all of the remaining grand jurors to

quarantine,⁴ significantly impeding the work of the grand jury, whereas remote grand jury proceedings may mitigate that risk.

2. *The availability of facilities* in the courthouse or other public buildings in which the whole grand jury or a part of the grand jury may be assembled in person consistent with public health guidance, including guidance on social distancing, and in which grand jury proceedings may be conducted with reasonable assurance that grand jury secrecy is maintained. In counties in which the regular grand jury room is insufficiently large to permit the assembly of the whole grand jury consistent with public health guidance, the most obvious alternative for grand jury proceedings in person may be a ceremonial courtroom, other large courtroom, or a jury assembly room. Consideration must be given, however, to competing demands for those facilities, including jury trials and essential nonjury proceedings that cannot lawfully or practically be conducted remotely, some of which may be entitled to equal or greater priority than grand jury proceedings. Moreover, although a facility certainly may be repurposed from time-to-time, such that it could be used for grand jury and other proceedings, the inherent uncertainty about the duration of jury trials and other proceedings, as well as public health guidance requiring extensive sanitation measures for facilities used by different persons for different purposes, may impede the reliable scheduling of grand jury proceedings in facilities also used for other purposes. Aside from facilities in a courthouse, it may be feasible to assemble the whole grand jury in an auditorium, gymnasium, conference center, or other large room in another public building consistent with public health guidance, although the use of facilities outside a courthouse may present concerns about the extent to which grand jury secrecy can be reasonably assured. When no facility suitable for the assembly of the whole grand jury in person is available, consideration should be given to the availability of multiple smaller facilities in the courthouse or one or more other public buildings to which grand jurors may be dispersed in small groups or individually for remote grand jury proceedings and in which grand jury secrecy can be reasonably assured.

⁴ See DPH Eighth Amended Administrative Order for Public Health Control Measures (July 28, 2020).

3. *The availability of technology, communications infrastructure, and technological support* for remote grand jury proceedings. Whether grand jurors participate in remote proceedings from a courthouse, another public building, or a private place, and whether they are dispersed in small groups or individually, remote grand jury proceedings are feasible only to the extent that the court can ensure:

- That the grand jury has access to video-conferencing and document-sharing applications with security features that provide reasonable assurance of grand jury secrecy, which would allow the grand jurors to observe and hear one another in a manner sufficient to enable each grand juror to fully participate in the proceedings, to observe and hear the prosecuting attorney, to observe and hear witnesses in a manner sufficient to enable the grand jurors to assess their demeanor and credibility, and to view documentary evidence. If all grand jurors are physically present in the courthouse or one or more other public buildings for remote grand jury proceedings, it may be feasible to use closed-circuit or intranet-based video-conferencing and document-sharing applications, which may be especially conducive to assuring grand jury secrecy. But even when internet-based applications are used, a variety of video-conferencing and document-sharing applications are commercially available with a range of security measures that may give reasonable assurance of grand jury secrecy.
- That grand jurors have access to technology necessary to utilize the video-conferencing and document-sharing applications. Personal ownership of computers, tablets, and other electronic devices suitable for video-conferencing and document-sharing purposes is common but far from universal, and the portion of the population with private access to such devices may vary significantly from county to county. In the event that it is necessary for each grand juror to individually have access to such a device, the court should be prepared to provide devices for grand jurors without a suitable device, and in counties in which personal ownership of such devices is less common, the court should anticipate the possibility that a

significant number of grand jurors may need to be provided with suitable devices. The court may wish to inquire of prospective grand jurors about the extent to which they have personal access to such devices, although lack of personal access to such a device should not be a reason for excusing a prospective grand juror. In the event that the grand jurors will be dispersed in small groups to multiple locations within the courthouse or one or more other public buildings, it may not be necessary for each grand juror to individually have access to a device, and the court should consider whether technology is available to permit the grand jurors in each of those locations to participate remotely without individual devices.

- That grand jurors have access to communications infrastructure necessary to reliably and securely connect with the video-conferencing and document-sharing applications. In the event that all or some of the grand jurors will participate remotely in grand jury proceedings from their own places of residence or other private places, it will be necessary for those grand jurors to have reliable access to high-speed internet service, the availability of which may vary significantly from county to county and within each county. The court may wish to inquire of prospective grand jurors about the extent to which they have personal access to high-speed internet service, although lack of personal access to such service should not be a reason for excusing a prospective grand juror. For grand jurors without access to high-speed internet service, the court should be prepared to provide such access, whether at the courthouse or another public building or by installation of an internet hotspot at some other location. In the event that all of the grand jurors will be physically located within the courthouse or another public building for remote grand jury proceedings, the court with greater confidence can assure access to the necessary communications infrastructure, whether closed-circuit, intranet, or internet.
- That the court has sufficient resources to provide grand jurors with technological support as needed to facilitate remote

grand jury proceedings. This requirement may be satisfied most effectively when grand jurors participate in remote grand jury proceedings from locations within the courthouse or one or more other public buildings, where court IT personnel are near and can be readily available to provide assistance.

4. *Any other relevant circumstances.*

Essential Requirements for Remote Grand Jury Proceedings

If a chief judge determines that remote grand jury proceedings are feasible and advisable, the chief judge should prepare a written protocol for remote grand jury proceedings, which at a minimum must address:

1. *The physical location of grand jurors participating remotely in grand jury proceedings, including:*

- Whether grand jurors are to be dispersed in small groups or individually, and if grand jurors are to assemble in small groups, the measures necessary to assure that those assemblies are consistent with public health guidance.⁵
- The physical locations from which grand jurors are permitted to participate remotely in grand jury proceedings, whether in the courthouse, in one or more other public buildings, or in private places to be selected by each grand juror.
- A description of any security measures associated with those physical locations that are necessary to reasonably assure grand jury secrecy, such as measures for securing locations within the courthouse or other public buildings from which grand jurors may participate in remote grand jury proceedings, as well as special instructions to be given to

⁵ To the extent that grand jurors are assembled in person at any location, any such assembly must comport with the previously-issued Guidance for Resuming In-Person Grand Jury Proceedings (Sep. 10, 2020).

grand jurors who may participate in remote grand jury proceedings from private places of their choosing.

- How the oath of grand jurors is to be administered.⁶

2. *The technology, communications infrastructure, and for remote grand jury proceedings, including:*

- A designation of the video-conferencing and document-sharing applications to be used in remote grand jury proceedings, as well as a description of any security measures associated with those applications that are necessary to reasonably assure grand jury secrecy, including instructions or other measures necessary to ensure that the proceedings are not recorded by any person other than an authorized court reporter.
- A designation of the person to host or otherwise control the video-conferencing application during remote grand jury proceedings, and if such person is not the foreperson or another grand juror, the measures necessary to assure that such person does not have access to the deliberations of the grand jury, so as to reasonably assure grand jury secrecy.
- A description of computers, tablets, other electronic devices, other technology, and communications infrastructure to be used by grand jurors to participate remotely in grand jury proceedings.
- A procedure for providing access to necessary technology and communications infrastructure for grand jurors without such access.
- A designation of IT personnel assigned to support remote grand jury proceedings.

⁶ See OCGA § 15-12-67 (b). See also Executive Order No. 09.10.20.02, Reducing Grand Jury Regulations to Assist the State's Response to the Spread of COVID-19 (Sep. 10, 2020) (“[A]ny purported requirement of the laws of this state, including but not limited to certain provisions of Code Sections 15-12-67 and 15-12-68, that prohibits remote administration of oaths for grand jury purposes is hereby suspended.”).

- If applicable, a description of any technical training to be provided to the foreperson, assistant foreperson, secretary, and other grand jurors prior to the commencement of remote grand jury proceedings.

3. *The participation of prosecuting attorneys, witnesses, court reporters, and other persons in grand jury proceedings, including:*

- The physical locations from which such persons are permitted to participate in remote grand jury proceedings and whether such persons will appear in the physical presence of one or more grand jurors.
- To the extent that witnesses will not appear in the physical presence of one or more grand jurors, how the oath is to be administered to such witnesses.⁷
- To the extent that prosecuting attorneys, witnesses, court reporters, and other persons are to be given their own access to the video-conferencing and document-sharing applications used for remote grand jury proceedings, the procedures necessary to assure that such persons do not have access to the deliberations of the grand jury, so as to reasonably assure grand jury secrecy.
- Measures necessary to ensure that grand jurors can observe and hear witnesses in a manner sufficient to enable the grand jurors to assess their demeanor and credibility.

4. *If the grand jury is to be selected remotely, the procedures to be employed in connection with remote grand jury selection, including:*

- The content of any written questionnaire to be sent to prospective grand jurors to facilitate remote grand jury selection.

⁷ See OCGA § 15-12-68. See also Executive Order No. 09.10.20.02, Reducing Grand Jury Regulations to Assist the State's Response to the Spread of COVID-19 (Sep. 10, 2020).

- Instructions to be given to prospective grand jurors in connection with remote grand jury selection.
- How the oath of prospective grand jurors is to be administered.⁸
- The process by which prospective grand jurors are to be examined by the presiding judge or the district attorney as to their qualifications to serve.⁹
- A procedure for providing access to necessary technology and communications infrastructure for prospective grand jurors without such access.

5. *The procedures to be employed by the foreperson and grand jurors in connection with remote grand jury proceedings, including:*

- Instructions to be given to grand jurors about the procedures for remote grand jury proceedings and the maintenance of grand jury secrecy in remote grand jury proceedings, including the need for grand jurors to participate remotely from a location in which no unauthorized person can observe or hear the proceedings, that no portion of the proceeding may be recorded other than by an authorized court reporter, and the need for grand jurors to be present during the entirety of each presentment.
- Instructions to be given to grand jurors about the steps to be taken in the event of a breach of grand jury secrecy, such as the appearance of an unauthorized person through the video-conferencing application or in the physical presence of any grand juror participating in remote grand jury proceedings.

⁸ See OCGA § 15-12-66 (b). See also Executive Order No. 09.10.20.02, Reducing Grand Jury Regulations to Assist the State's Response to the Spread of COVID-19 (Sep. 10, 2020).

⁹ See OCGA § 15-12-66 (a). See also Executive Order No. 09.10.20.02, Reducing Grand Jury Regulations to Assist the State's Response to the Spread of COVID-19 (Sep. 10, 2020).

- Instructions to be given to grand jurors about steps to be taken in the event that a grand juror encounters a technical problem or that a grand juror requires a break to address any personal issues.
- A process whereby the foreperson may confirm that each participating grand juror is able to see and hear the prosecuting attorney, the witnesses, and the other grand jurors.
- A process for the presentation of evidence whereby the foreperson or prosecuting attorney may ensure that each participating grand juror is able to participate fully, including by asking questions of any witness.
- A process for grand jurors to observe and inspect any non-documentary evidence that cannot be shared with grand jurors through the document-sharing application.
- A process for deliberations whereby the foreperson may ensure that each participating grand juror is able to participate fully.
- A process for voting whereby the foreperson may ensure that the vote of each participating grand juror is accurately counted.
- The procedure for sealing and returning indictments in open court. This guidance does not suspend or alter the law requiring the return of indictments in open court. See *State v. Brown*, 293 Ga. 493 (2013).

In connection with the preparation of this written protocol, the chief judge must consider whether grand jury proceedings conducted pursuant to the protocol will meet all legal requirements for grand jury proceedings, including that the protocol reasonably assures grand jury secrecy. If the chief judge is satisfied that the protocol assures the lawful conduct of grand jury proceedings remotely, the chief judge should enter an order incorporating and adopting the written protocol.

Best Practices for Remote Grand Jury Proceedings

The following are recommended as best practices for remote grand jury proceedings:

1. To the extent permitted by public health conditions, the availability of suitable facilities, and technology resources available to the court, a form of remote grand jury proceedings in which grand jurors are physically located within the courthouse or one or more other public buildings, but dispersed in small groups or individually to multiple locations within those buildings, is generally preferable. Such a form enables the court to better secure the physical locations from which grand jurors participate remotely in grand jury proceedings, so as to reasonably assure grand jury secrecy; potentially avoids technical complications that may arise when grand jurors participate remotely from other locations; and places the grand jurors near IT personnel in the event that technical support is necessary.

2. If it is not feasible or advisable for all grand jurors to be physically located in the courthouse or one or more other public buildings during remote grand jury proceedings, it is recommended that the foreperson, and perhaps the assistant foreperson and secretary as well, participate in such proceedings from a location in the courthouse, to the extent permitted by public health conditions. The physical presence of the foreperson at the courthouse allows the prosecuting attorney and witnesses to appear before the grand jury in the physical presence of the foreperson; allows the foreperson to administer oaths to the witnesses in person; allows the foreperson to seal and readily deliver indictments to the bailiff; allows the foreperson to be present for the return of indictments; and places the foreperson, assistant foreperson, and secretary near IT personnel in the event that technical support is necessary.

3. To the extent permitted by public health conditions, the prosecuting attorney, witnesses, the court reporter, and other persons authorized to be present for the presentation of evidence to a grand jury should appear before the grand jury and be given access to the videoconferencing application used for remote grand jury proceedings only in

the physical presence of the foreperson.¹⁰ This practice enables the foreperson to ensure that such persons are excused from the location in which the foreperson is present—and that they, therefore, no longer have access to the video-conferencing application—prior to the commencement of deliberations, better assuring grand jury secrecy.

4. Prior to the commencement of remote grand jury proceedings, the presiding judge should deliver a modified charge to the grand jury, instructing the grand jury about special issues that may arise from the remote conduct of the proceedings, including measures to reasonably assure grand jury secrecy, what steps should be taken in the event of a breach of grand jury secrecy, what should be done in the event that a grand juror has a technical problem with the video-conferencing or document-sharing application, and what should be done in the event that an emergency arises or a grand juror otherwise needs to leave the proceedings early. The content of such a modified charge should be adjusted to fit the particular form of remote grand jury proceedings that is employed. Among other things, if any grand juror may participate remotely in grand jury proceedings from their own place of residence or another private place of their choosing, the grand jury should be instructed about the need for grand jurors to participate remotely in a secluded location within such private place and that all grand jurors participating remotely must be physically located within the geographic jurisdiction of the court.

5. Each grand juror should be given a phone number at which they can contact the foreperson during remote grand jury proceedings in the event of a technical problem or emergency.

6. It is recommended that the foreperson, assistant foreperson, or secretary be designated as the person to host or otherwise control the video-conferencing application during remote grand jury proceedings and that the foreperson, assistant foreperson, or secretary receive technical training on the use of the video-conferencing application prior to the

¹⁰ To the extent that such other persons appear in person in the physical presence of the foreperson, their appearance must comport with public health guidance and the previously-issued Guidance for Resuming In-Person Grand Jury Proceedings (Sep. 10, 2020).

commencement of remote grand jury proceedings. To allow a prosecuting attorney, clerk of court, judicial staff, or IT personnel to control the videoconferencing application would arguably suggest a breach of grand jury secrecy.

7. Because participants may be especially fatigued by video conferences—more so than by meetings in person—regular breaks should be scheduled for snacks, for the use of restrooms, and for grand jurors to attend to personal issues that may have arisen during the remote proceedings.

8. Throughout the remote proceedings, the foreperson should, from time-to-time, confirm that the grand jurors are encountering no technical difficulties and can see and hear the prosecuting attorney, the witnesses, the other grand jurors, and the evidence being presented.

9. It is important to ensure that all grand jurors are given a fair opportunity to ask questions, and before releasing a witness, the foreperson should confirm that no grand jurors have additional questions for the witness.

10. It is important that all grand jurors have a fair opportunity to participate in deliberations and that their vote is recorded, and special care should be taken to mitigate the risk that the remote nature of the proceedings might impede full deliberations and accurate voting. Before concluding deliberations, the foreperson should confirm that no grand jurors have additional comments. And to ensure that all votes are recorded accurately, the foreperson should consider requiring some affirmative act by each grand juror to cast a vote, whether by voice, visible hand signal, or otherwise.

APPENDIX

Helpful Resources for Remote Grand Jury Proceedings

Executive Order No. 09.10.20.02, Reducing Grand Jury Regulations to Assist the State's Response to the Spread of COVID-19 (Sep. 10, 2020)

Guidance for Resuming In-Person Grand Jury Proceedings (Sep. 10, 2020)

Potential Constitutional and Statutory Issues with Virtual Grand Jury Proceedings (Memorandum from Michael B. Terry, Esq. to Justice Blackwell, Aug. 24, 2020)

Virtual Grand Jury Pilot Program (New Jersey Courts Jul. 27, 2020)