COURTS IN CRISIS
Part II: The Uneven Spatial Dynamics of Dispossessory Court in Georgia

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About the Center for Access to Justice

The Center for Access to Justice at Georgia State University College of Law supports those working to ensure meaningful access to the courts and equal treatment in the civil and criminal justice systems, with a regional focus on the South. To that end, the Center convenes stakeholders, engages in research and public education, and trains the next generation of lawyers to serve the public interest.

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About this report

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Courts In Crisis
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Overview

Eviction law and court policies vary widely from state to state, and even within states, given local implementation of state law and policy. In light of COVID-19, many states have enacted moratoria and other measures to stall evictions, complemented by federal measures like the CARES Act1 and the more recently promulgated moratorium from the Centers for Disease Control and Prevention (CDC).2 Although the CDC moratorium was intended to prevent mass evictions and thus stem the spread of COVID-19, its effects have varied across the country as jurisdictions interpret and apply the moratorium differently.3 Similarly, eviction prevention measures enacted at the state level have been interpreted and applied differently by local jurisdictions and by the courts operating within them.

This report revisits and expands on our May 2020 report, which provided an overview of Georgia’s dispossessory courts’ initial responses to the COVID-19 pandemic and the Georgia Supreme Court’s resulting emergency orders. In short, data from that earlier survey showed that courts across the state had adopted a range of responses with respect to decisions about remaining open and whether to continue issuing judgments and writs. At that time, although most courts had suspended dispossessory hearings, and few were issuing judgments or writs, most continued to accept eviction

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2 Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19 (Sept. 4, 2020).
filings. In addition, we found there was no association between decisions about court policies and counties’ COVID rates. This patchwork approach meant that litigants’ experiences with the eviction process would vary depending on their location and may also change over time, making it harder for people with little legal experience and operating under extremely stressful circumstances to navigate the system effectively.

As emergency orders were revised⁴ and courts began to reopen (prior to issuance of the CDC order⁵), the clear next question was: What will courts do now? This second survey was undertaken to assess where courts across the state find themselves months after our initial report and how they are handling dispossessory cases that have been filed in the interim.

The data collected through this second round of court surveys reveal that access to the court system has remained fragmented. As of late August, most courts were hearing cases in some fashion, but policies and procedures for hearing cases continued to vary significantly. While some differences in implementation tracked the rural-urban divide, more often we found little to no association between observed differences in operation and any other variables, including self-reported pre-COVID caseloads, estimated case backlogs, county wealth, or county COVID infection rates. Thus, as the public health crisis continues, and courts react to a constantly changing map of state and federal policies, the response of Georgia’s dispossessory courts will likely remain haphazard. This approach to the handling of dispossessory cases suggests continued strain on litigants’ ability to navigate the process and makes it difficult to

⁴ Since our May 2020 report, the Georgia Supreme Court has issued multiple further iterations of its emergency order, reissuing litigant filing deadlines effective July 14, 2020 (but allowing for further tolling where provided by local judicial emergency order); encouraging the use of technology and remote proceedings as a “safer alternative to in-person proceedings”; providing courts with the discretion to conduct in-person judicial proceedings in accordance with “public health guidance”; and allowing chief judges to impose more restrictive local judicial emergency orders. See Fifth Order Extending Declaration of Statewide Judicial Emergency, Supreme Court of Georgia, filed Aug. 11, 2020, available at https://www.gasupreme.us/wp-content/uploads/2020/08/5th-Extension-of-Statewide-Judicial-Order_FINAL_entered.pdf; see also Court Information Regarding the Coronavirus, Georgia Supreme Court, available at https://www.gasupreme.us/ (listing all emergency orders).

⁵ As noted below, the data on which this report are based were collected in July and August 2020, before issuance of the CDC order.
predict how future policies, including the recent CDC order, will impact such a
decentralized system.

Methodology

The survey was conducted by the Georgia Appleseed Center for Law and Justice and
 carried out with the help of collaborative work provided by pro bono volunteers from
the Nelson Mullins law firm from July 28th to August 24th, 2020; all data are reported
as of the date all data were received (Aug, 24, 2020). Using a nonrandom sampling
procedure, the survey methodology was designed to capture court data from a broad
representation of counties (in terms of wealth and geographic diversity) across the
state. Counties surveyed included the ten poorest counties and ten wealthiest counties
in the state as well as counties served by the United Way of Greater Atlanta. Other
counties were then added to the survey group to ensure broader regional
representation throughout the state. In total, 64 counties were sampled with a response
rate of 91% (N=58) responding to parts or all of the survey questions. These results
encompass approximately 1/3 (36.5%) of all counties in Georgia.

Survey responses from magistrate courts were transcribed and coded into broad
categories to address conceptual differences in counties’ policies and actions. To
increase coding reliability, a team of five researchers participated in the coding process.
Some counties did not respond to all the questions, thus partial information was used
when applicable. In addition, the researchers supplemented limited or non-responses
to key questions with information obtained through court websites and publicly
available data.

From this data, a mixed methods analysis was performed and then supplemented with
information from the USAFacts status reports for COVID-19 rates in Georgia as of
August 246 as well as demographic data for each county based on its metropolitan

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6 USAFacts is a non-partisan civic initiative that collects daily county-level cumulative COVID-19 case
totals from the Centers for Disease Control and state and local-level agencies directly. See USAFacts,
status and relative income level in Georgia. Quantitative and qualitative methods were used to compare direct court responses in the survey, while a spatial analysis was conducted to examine the geographic distribution of court responses throughout the state. All quantitative analysis was performed using STATA 16 and spatial analysis was performed using ArcGIS 10.7.

Findings

In our May 2020 report, we found that while almost 84 percent of courts remained open, they had instituted a range of access limitations, such as closing buildings to the public or operating by appointment only. There was no association at the time between decisions about whether to remain open and counties’ COVID rates. Thus, although most courts remained open in some form, litigants’ ability to address cases varied from county to county.

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Footnote:

7 Geographic classification of counties was based on the metropolitan classification status from the Office of Management and Budget (OMB) delineation as of February 2013. See Rural-Urban Continuum Codes, Economic Research Service, United States Department of Agriculture, available at https://www.ers.usda.gov/data-products/rural-urban-continuum-codes.aspx#.UYJuVEqZReY.

County wealth levels were based on median household incomes from the American Community Survey (ACS) 5-year tables (2013-2017), which were then converted into deciles and grouped for comparison. Counties that fell within the top 3 deciles of per capita household income were considered wealthy, those in the bottom 4 deciles were considered poor, and the middle 3 deciles were considered middle income. See American Community Survey, Data Tables and Tools, available at https://www.census.gov/acs/www/data/data-tables-and-tools/american-factfinder/.
As of late August 2020, 93 percent (51 of 55 responding) of counties reported that they were currently hearing dispossessory cases. As Figure 2 demonstrates, there is no clear pattern as to counties that were hearing dispossessory cases as of late August and those that were not.

Of those courts hearing cases, 63% (32 of 51 courts) were accepting remote filings. While the majority of courts were accepting remote filings, the decision to do so showed no association with any other metric, including comparisons to counties by geography, COVID rates, and wealth.

In mapping the available data onto rural and urban spaces, we found that all courts in predominantly urban counties reported that they were hearing dispossessory cases, while a few smaller, more rural courts still are not holding hearings. Courts often described adhering to COVID-19 guidelines in their operating procedures (in the process of responding to specific survey questions), but the data did not reflect any association between the decision to hear cases and county COVID-19 infection rate as of August 24.

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It was apparent from survey responses in August 2020 that many courts rely on basic tracking systems to monitor and generate court data. Qualitative analysis indicated a high number of “unknown” responses. Some respondents suggested this may be due to rudimentary tracking systems and dated software programs. This is not surprising as many courts, including smaller, rural courts, continue to use paper record systems. Additionally, several courts had only just resumed operations in August and thus, as to some questions, had little relevant experience to date.
On average, the majority of courts (71%) reported that they typically handled between one and twenty cases per month prior to the COVID-19 public health crisis. When compared to self-reported pre-COVID case volumes, there was no statistical association between case volume and the decision to hear cases (see Figure 3). This indicates that dispossessory caseload was likely not a driving factor in most courts’ decisions to hold hearings.

Of those courts that stated that they were currently hearing cases, 38 percent were doing so remotely (or reported they would do so if and when needed) and 62 percent were not. There was no association between the decision to hear cases remotely and self-reported case volumes prior to COVID-19.
There was, however, a significant association between county geography and the decision to hold remote hearings (see Figure 4). Of the 27 courts in our dataset located in metropolitan counties, 52 percent were holding remote hearings; by contrast, in the 26 counties located in non-metropolitan areas, only 23 percent were holding remote hearings.\textsuperscript{9}

In comparison, while most courts with 10 or fewer cases per month pre-COVID were not holding remote hearings, courts with moderate or large case volumes prior to the public health crisis were overall equally split in the use of remote hearings. Forty-six percent of courts with moderate or large case volumes were using remote hearings, while 53 percent were not. This reinforces the above finding that case volume did not impact court decisions about the use of remote hearings, while proximity to urban spaces may influence such decisions. There was no association between courts holding remote hearings and the relative level of wealth of the county in which they are located.

Within the group of counties that reported offering remote hearings, there was still much variation in how and why such hearings are being conducted. Qualitative analysis indicated a variety of responses to the COVID-19 health crisis, including charging a

\textsuperscript{9} Classification of counties metropolitan status was based on the Office of Management and Budget (OMB) delineation as of February 2013. See Rural-Urban Continuum Codes, Economic Research Service, United States Department of Agriculture, available at https://www.ers.usda.gov/data-products/rural-urban-continuum-codes.aspx#UYJuVEpZrY.
convenience fee for online hearings, holding in-person court through closed doors, and leaving it to the judge’s discretion to hold in-person or remote hearings. Some courts were only willing to hold remote hearings if both parties agreed, while others described online hearings as “optional.” One court described a fear of tenants “working the system” by refusing Zoom hearings.

Another issue impacting eviction court processes during COVID-19 is the extent to which courts utilize more informal means to resolve cases. In addition to remote hearings, courts have used or continued to use alternative formats to hearing cases in person. Qualitative analysis of survey responses in August showed that several courts were encouraging informal, out-of-court settlement (distinct from court-supported mediation programs) and some reported seeking to establish a formal mediation program. At the same time, one county reported that it had suspended its mediation program in light of the pandemic and another county reported a decrease in informal agreements since the start of the public health crisis.

One of the main concerns regarding state and federal eviction moratoria has been the size of court backlogs that might amass as courts ceased hearing cases. This has led to recurring concern of an “eviction wave” once existing moratoria end.10 Among those

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10 Since May 2020, there have been 1,290 articles in national and local newspapers referencing the idea of an “eviction wave” emerging after existing moratoriums end, according to ProQuest Congressional search results obtained as of Nov 1, 2020 (https://search.proquest.com/news/). One source estimated that as many as 23 million families were at risk of eviction when the federal eviction moratorium expired on July 24. See Josh Cohen, Shelterforce, Jul. 24, 2020, available at https://shelterforce.org/2020/07/24/what-happens-if-23-million-renters-are-evicted/.
counties surveyed, we observed that many courts did not in fact have sizable case backlogs at the time of the second survey (see Figure 5). Only 37 percent of responding courts reported having a case backlog in August. This is partially due to the fact that, in some smaller counties, case volumes are significantly lower than Atlanta.11

Sixty-three percent of counties (29 total) responding to the question about backlogs stated that they had no backlog or were current with their processing of cases. Thirty-seven percent (17 counties) reported some backlog, although the number of cases ranged widely—from two to an estimated 4,000 cases. Based on observed overlaps between the counties included in the earlier report and those included in this report, we suspect that one reason for the lack of backlogs is that some counties have remained open throughout most or all of the relevant time period and continued processing dispossessory cases, albeit at a lower rate.12 There was some variation—although perhaps not as much as one might

11 Counties’ self-reported pre-COVID caseloads confirm this assumption. There was a significant association between designation as metropolitan or nonmetropolitan and the number of cases courts reported prior to COVID-19. Of responding courts located in metropolitan counties, 80 percent reported handling an average of 11 or more cases per month, while only 56 percent of responding courts located in nonmetropolitan counties reported handling an average of 11 or more cases per month.

12 While much has been made of the federal CARES Act’s potential to limit evictions during COVID-19, evidence is emerging that the Act only partially slowed the number of evictions proceedings in many states. The Urban Institute estimated that only 28% of the existing US rental market was covered by the CARES Act given its limited applicability to federally financed rental units. See Laurie Goodman, Karan Kaul, and Michael Neal, Urban Wire (the blog of the Urban Institute), Apr. 2, 2020, available at
expect—between the typical caseload of each court and the level of backlog. There was no association, however, between the decision to resume hearings and case backlogs.\textsuperscript{13}

The fact that so many courts had no case backlog as of August illustrates the power of local courts to shape the realities of eviction on the ground, as distinct from national or even state-level conversations. In our May 2020 report, we noted that the emergency orders provided no specific guidance as to how local courts should handle dispossessory cases, leading to varying outcomes in interpretation and implementation. Although most courts were not holding hearings or directing law enforcement to evict tenants at that time, in the ensuing months, it appears that a number of courts have resumed hearing cases, limiting their existing backlog as of August.

Courts were also asked about the means with which they were communicating with litigants about new procedures and/or relevant deadlines. More than half of counties reported informing litigants of new procedures or relevant deadlines by mail; much smaller percentages of counties reported using other means to inform litigants, such as email or phone. Just over one-fifth (22 percent) of counties reported providing such information through a website.

The survey instrument did not include questions about courts’ responses to state or health guidelines about COVID-19, but many respondents referenced these in their survey answers. This tendency may reflect uncertainty about sanctioned responses to the health crisis and the need to validate court processes.

\section*{Conclusion}

The data collected for this report confirm that the fragmentation observed in our earlier May report still applies in the context of courts reopening. While the data do

\textsuperscript{13} Of those counties currently hearing dispossessory cases, 65 percent reported having no backlog and 35 percent reported some backlog of cases.
not reflect the most recent developments in eviction law and policy—such as the CDC moratorium—due to the timeframe in which the data were collected, we find no reason to doubt that differences in implementation persist.\textsuperscript{14}

While some of the variation we saw in the data seemed to track the rural-urban divide, more often there was no reliable means for predicting how a county might adapt its court processes to a public health crisis such as COVID-19. Issues of communication, compliance, and tracking remain woefully incomplete and varied, with courts remaining under extraordinary pressures to navigate state and federal orders by interpreting and adapting policies and procedures for their local context. This patchwork approach to eviction in a decentralized court system continues to raise concerns about the consistent treatment of litigants across counties, litigants’ ability to determine what court procedures are currently in place,\textsuperscript{15} and thus, litigants’ ability to respond to and navigate the legal system. Moreover, the fact that such variation persists, and does not clearly track any of the variables explored herein, suggests that policies enacted at the state or federal level may not have their intended effect on the local level.

\textsuperscript{14} Varying interpretations of what the initial order allowed have already been observed from state to state and, in some cases, from court to court; therefore, one would also expect county-to-county variation in implementation. See Goldstein, supra note 3. More recent guidance provided by the CDC arguably weakens the initial understanding of the moratorium. That guidance makes clear, for example, that landlords can initiate proceedings for nonpayment of rent cases as long as actual eviction does not occur while the order is in effect and that landlords can challenge the truthfulness of a tenant’s declaration form (required for protection under the order). See HHS/CDC Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19, Frequently Asked Questions (Oct. 9, 2020), available at https://www.cdc.gov/coronavirus/2019-ncov/downloads/eviction-moratoria-order-faqs.pdf. Thus, the guidance provides additional grounds on which local jurisdictions may differ in terms of what they will allow and the process they provide for doing so.

\textsuperscript{15} See Margaret Hagan, Designing against legal misinformation during an emergency, Medium, Jun. 8, 2020, available at https://www.medium.com/legal-design-and-innovation/designing-against-legal-misinformation-during-an-emergency-4be8008282e3 (noting how eviction protection policies vary widely across jurisdictions and searching for information online can often result in misinformation).