

NEWS

NJ courts hit with surge of inmates seeking release over coronavirus fears

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On trial for killing and dismembering a Bergenfield man, two siblings sat before a judge last week and rattled off medical issues – a stroke, asthma, chest pains.

The ailments, they said, justified their release from the Bergen County Jail lest they should contract the coronavirus behind bars.

Two days earlier, in Morris County, a Randolph man arrested for allegedly threatening to shoot his mother-in-law also cited asthma and heart problems in his bid to escape the threat of a COVID-19 outbreak among prisoners.

Both judges swiftly denied the requests. But like the virus itself, legal experts believe the petitions will keep spreading.

Prosecutors in North Jersey say more and more prisoners are seeking discharge, fearing the social distancing and sanitizing necessary to control the disease is impossible in the lockups. While few motions for release have succeeded so far, they've raised questions about how the legal system should handle medically compromised inmates with conditions that put them at higher risk.

“We’re sort of looking at anybody who, quite frankly, probably does not need to be in the county jail right now and making motions on those people’s behalf,” said Jennifer Sellitti, a spokeswoman for the state Office of the Public Defender.

That includes elderly prisoners; those with HIV, diabetes or autoimmune deficiencies; and inmates nearing parole or awaiting trial on third or -fourth degree charges, she said. The ACLU has appealed to Gov. Phil Murphy for more releases, including almost 800 prisoners over the age of 60.

Jails around the state have increased cleaning, banned visitors and taken other steps to minimize the risk. But that hasn't kept the virus at bay.

On Wednesday, a Hudson County corrections officer became the first law enforcement officer in New Jersey to die from the outbreak, and jails in Bergen, Passaic, Morris, Essex and Hudson counties have all reported infections among staff or prisoners. The Bergen jail in Hackensack went on lockdown two weeks ago after an immigration detainee and a guard tested positive.

In Bergen County, at least 10 prisoners have petitioned the courts for release and more are expected, spokeswoman Elizabeth Rebein said. Only three requests have been granted.

Essex County has seen a “significant uptick” in defendants requesting that their detention be reconsidered, according to Katherine Carter, a spokeswoman for the county Prosecutor’s Office. She didn't have exact figures.

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Inmates appear emboldened by a state Supreme Court order last month that freed 809 inmates from county jails to prevent a severe outbreak of COVID-19. But the move, while widely hailed by criminal justice advocates, only applied to prisoners serving time for minor crimes and probation violations, and did not consider detainees being held while awaiting a trial.

Prosecutors throughout the state, who had the option of challenging individual releases, reacted differently. Bergen County contested just three of 38 inmates eligible to be let go, but Essex County objected to almost half of the 88 proposed cases.

Many of those supposedly low-level cases involved domestic abusers and drunk drivers, according to David Calviello, president of the Assistant Prosecutors' Association of New Jersey.

“They may be low level, but that doesn’t make them any less dangerous to the community,” he said.

The state has yet to issue guidelines on how courts should handle requests from inmates accused or convicted of felonies. Judges, who typically release defendants only if they pose a low risk, have erred on the side of caution.

“I don’t see how a risk of infection in the jail is something that impacts the potential danger to the community by releasing the defendant,” Stephen Taylor, a Superior Court judge in Morris County, said Wednesday. “I maintain that position consistently in these cases and I’ll continue to do so until we have some meaningful guidance that says this court is in error in taking that position. I don’t think I am.”

On Wednesday, a state appeals court upheld a Monmouth County judge's decision to keep an 84-year-old murder suspect in custody despite a history of heart attacks and cancer. The defendant remains a danger to the community, and the Monmouth jail has shown no signs of a coronavirus outbreak, prosecutors argued.

There are no immediate plans to lobby the state Supreme Court for another mass release on the scale of last month's, according to Sellitti, of the Public Defenders Office.

But in letter issued Tuesday, the American Civil Liberties Union of New Jersey called upon Murphy to reduce the state prison population by commuting sentences, granting medical furloughs and speeding up parole boards.

The state ACLU, which backed the previous order, said a new decree should target pregnant inmates, those due to be released within the next year, and 796 prisoners over the age of 60 who face a higher risk of death and are less likely to reoffend.

“There are certainly populations in state prison that we think can be safely released, and should be for the safety of incarcerated people, people who work in the state prisons and their loved ones,” Alexander Shalom, a senior attorney with the ACLU, said. “We’ve got this group of particularly vulnerable people who if they stay in prison will likely get coronavirus and wind up in our hospitals.”

Murphy’s office did not respond to a request for comment.

Prosecutors have hinted that healthy prisoners who appeal will likely remain in custody.

“If there’s a changed circumstance, that would be a factor to be considered,” said Carter, the Essex prosecutor's spokeswoman. But absent a medical issue, “we would likely not support the request for release.”

In the meantime, all jury trials and grand juries in the state have been suspended indefinitely in response to the pandemic. That means people arrested but not convicted of any crime may be stuck behind bars for weeks more, in jails that could serve as breeding grounds for the virus, defense attorneys say.

"I understand why you don't want to convene a grand jury and have 23 people cooped up in the room," said John Azzarello, president of the state's Association of Criminal Defense Lawyers. "But it's also not in the public health interest to leave our client in this county jail for perhaps another three to six months on end with almost no social distancing."

Staff Writer Kathleen Hopkins contributed to this article.

Tom Nobile covers Superior Court in Bergen County for NorthJersey.com. For unlimited access to the most important news from criminal trials to local lawsuits and insightful analysis, please subscribe or activate your digital account today.

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