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Some people awaiting trial while in jail should be set free due to COVID crisis, N.J.'s top court says

By Blake Nelson

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New Jersey's Supreme Court has rejected a proposal to release hundreds of people from jail who are awaiting trial, but they did say some should have their detention re-considered because of the coronavirus crisis.

The pandemic has kept new trials at a standstill, and all seven justices agreed Thursday that lower courts should consider setting free some people who have already waited six months behind bars and have not been accused of the most serious crimes, especially if health problems put them at greater risk.

"COVID-19 has created an ongoing health crisis of enormous proportions for all of society — including individuals held in jail," Chief Justice Stuart Rabner wrote in the court's opinion, and he asked lower courts to move quickly to re-consider cases.

Residents are only locked up before trial when a judge believes they pose a risk to the public or might run away, and almost 5,000 people were in jail waiting for juries to resume as of Monday, according to the court.

Defense lawyers argued for more sweeping change last month.

Anyone locked up for at least six months, which is generally the deadline for a trial to begin, should be released if they'd only been accused of committing a second-degree offense or less, the public defender's office and the American Civil Liberties Union of New Jersey said.

That would have included around 650 people potentially charged with arson, assault and robbery, among other crimes, lawyers estimated late last year.

The justices disagreed, saying "not all second-degree offenses or offenders are alike."

But even if a judge was right to lock up somebody originally, the coronavirus was a good enough reason to re-consider, Rabner said. That was especially true if the time somebody has spent behind bars is as long as the sentence they'd eventually get if convicted, he said.

"We're gratified that the court recognized a desperate need to address the crisis," Alexander Shalom, a lawyer with the state chapter of the American Civil Liberties Union, said in a statement. "With this ruling, the court will ensure that people have some way to challenge their prolonged confinement in an unprecedented environment."

Jennifer Sellitti, a spokeswoman for the public defender, said the decision will help “ensure that no person languishes behind bars during a time when jury trials are suspended.”

A spokesman for the state attorney general’s office, which had opposed any mass release, did not immediately respond to a request for comment.

When judges consider a person’s health, a “generalized fear of contracting COVID-19” isn’t a good enough reason for release, Rabner wrote. Instead, courts should examine “whether a defendant’s health has deteriorated since the detention hearing and is now more susceptible to serious health consequences in jail.”

Those charged with murder or facing the possibility of life imprisonment should probably not get a new hearing, Rabner added.

Of those awaiting trial behind bars, more than 1,840 have been accused of the most serious crimes, 1,780 have been charged with second-degree offenses, around 1,000 face third-degree charges and fewer than 300 were accused of the lowest crimes, according to court records.

That includes 28 people facing disorderly persons offenses, which generally only result in six-month sentences anyway, the court said.